

Supreme Court No. 200,568-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

STEPHEN K. EUGSTER,

Lawyer (Bar No. 2003).

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**ANSWERING BRIEF OF THE
WASHINGTON STATE BAR ASSOCIATION**

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I. OVERVIEW

Respondent Stephen Eugster (Eugster) was hired to represent an elderly client, Marion Stead (Marion), in her estate planning. Her primary objective in hiring Eugster was to eliminate her son, Roger Samuels (Roger), from control of her affairs because she did not trust him. Marion also directed Eugster to (1) pursue assets that were used improperly to overfund a trust being administered by Roger and (2) retrieve other personal property that Roger removed from her residence.

Eugster set up Marion's estate planning so that he would have control over her assets instead of Roger. Eugster had Marion execute a durable power of attorney making himself her attorney-in-fact and a living trust making himself trustee if she were incompetent to serve as trustee. Eugster never attempted to recover any of Marion's assets that were used to overfund the trust administered by Roger nor did he attempt to retrieve Marion's personal property from Roger.

Marion decided that Eugster was not representing her interests. She terminated him and hired lawyer Andrew Braff (Braff) to represent her. Braff had Marion execute estate planning documents revoking the power of attorney assigned to Eugster and designating a professional trustee as her new attorney-in-fact and successor trustee. Braff informed Eugster that he was terminated and that his power of attorney was

revoked, requested Marion's client file, and directed Eugster not to disclose Marion's confidences and secrets to Roger. Eugster refused to acknowledge Braff as Marion's lawyer, refused to acknowledge the revocation of his power of attorney, refused to turn over Marion's client file, and deliberately disclosed client confidences and secrets to Roger.

Instead, Eugster recruited Roger to join him in filing a baseless guardianship action against Marion seeking to have Roger appointed as guardian over Marion's person. If successful, the guardianship would have installed Eugster as trustee over Marion's assets and as her attorney-in-fact. The Court dismissed the guardianship, but the action caused serious damage to Marion, including personal humiliation, destruction of her relationship with Roger, and \$13,500 in fees and costs.

The Hearing Officer and a unanimous Disciplinary Board (Board) recommended disbarment, finding that disbarment was the presumptive sanction in at least¹ three counts and suspension was the presumptive sanction in three counts. In his brief to the Board,² Eugster claimed that if presented with the same situation he would "have to do it again."

¹ The presumptive sanction for Count 3 was not set forth in the decision. As discussed below, disbarment is the presumptive sanction for Count 3 for violating RPC 1.8(b) and RPC 1.9(b).

² See Bar File (BF) 132 at 2. Eugster represented himself pro se before the Board.

Disbarment is the only effective means to prevent Eugster from engaging in similar misconduct and to protect the public.

II. COUNTERSTATEMENT OF ISSUES

1. The pivotal issue at hearing was whether Eugster acted to protect his client or intentionally sought to betray and exploit her for financial gain. Although Eugster testified that he acted in her best interest, the Hearing Officer did not credit his testimony. On appeal, Eugster asks the Court to adopt the testimony that the Hearing Officer rejected. Should this Court retry the facts?

2. The Board unanimously recommended Eugster's disbarment for intentionally disregarding the client's objectives, intentionally using client confidences and secrets to his client's detriment, and filing a baseless guardianship action against his former client with intent to install himself as trustee over his client's assets. Should this Court affirm the Board's sanction recommendation?

III. COUNTERSTATEMENT OF CASE

A. BACKGROUND REGARDING PRIOR ESTATE PLANNING

During the 1990s Eugster represented Roger in several legal matters, including his marital dissolution and estate planning. Transcript (TR) 251-52. In 2003, Roger took his mother, Marion, and stepfather, John Stead (John), to a lawyer for estate planning services. Amended FOF

2.13³; FOF 2.13.⁴ Roger did most of the talking and Marion participated very little. Amended FOF 2.13. Roger proofread John's and Marion's wills and made corrections. TR 293; TR 297. John and Marion executed wills that included supplemental needs trusts.⁵ Washington State Bar Association (Association) Exhibit (EX) A- 2.1; EX A-3.

John and Marion were not pleased with the special needs trust provisions in the wills that designated Roger as trustee over their community property. TR 163-65. In December 2003, John and Marion hired lawyer Summer Stahl (Stahl) to provide estate planning services to eliminate the special needs provisions.⁶ TR 164-65. In addition, they wanted Stahl to assist in changing the beneficiary on John's insurance

³ This refers to the Disciplinary Board's amended finding of fact (Amended FOF) 2.13 at page 3 of the Disciplinary Board Order Adopting Hearing Officer's Decision With Amendments (Board's Order). BF 157, attached as Appendix 1. The Amended FOF contain certain paragraph numbers that were used twice. For example, there is Amended FOF 2.21 on page 6 and Amended FOF 2.21 on page 8. Reference to those findings shall be to the paragraph and page number.

⁴ This refers to the Hearing Officer's Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendations (FOF). BF 87, attached as Appendix 2. The FOF contain certain paragraph numbers that were used twice. For example, there is FOF 2.23 on page 7 and FOF 2.23 on page 11. Reference to those findings shall be to the paragraph and page number.

⁵ Amended FOF 2.13 erroneously reflects that "Respondent" prepared the supplemental needs trust. As indicated later in Amended FOF 2.13, this is a typographical error. The supplemental needs trust was prepared by lawyer David Hellenthal, not Eugster.

⁶ Page 6 of Eugster's brief claims that Marion was "confused" by the special needs provisions. This is incorrect. Marion and John simply did not like or want the special needs trust provisions as part of their estate plan. Amended FOF 2.14; TR 233-34.

policy from Roger as trustee back to Marion, which she did. Amended FOF 2.14.

Roger was upset about Stahl's involvement. In December 2003, Roger had Marion examined for competency by Duane Green, Ph.D. Amended FOF 2.14.1; FOF 2.39; EX A-67 at 17. Dr. Green found that Marion was competent. Amended FOF 2.14.1; EX A-67 at 17. Stahl observed no signs of incompetency in Marion. Amended FOF 2.14.1.

On February 4, 2004, John died. FOF 2.17; TR 260. Roger was the personal representative of John's estate and trustee of John's trust. FOF 2.17; TR 261. In March 2004, Marion moved from her residence into an assisted-living facility (Parkview). FOF 2.17. Roger asserted control over Marion's money and financial affairs, even objecting to her request to use \$100 of her own money. FOF 2.16; Amended FOF 2.19; TR 262. Roger declined all requests to disburse funds from John's trust to Marion for her support. TR 394-95. Marion and Roger's relationship became strained. FOF 2.23 at 7. Marion did not trust Roger and believed he was taking her money. FOF 2.23 at 7.

B. MARION HIRES EUGSTER FOR ESTATE PLANNING

On June 9, 2004, Marion hired Eugster to diminish Roger's control over her affairs, help her regain property she believed Roger possessed, investigate the funding of John's trust fund subsequent to his death, and

help her sell the family residence. FOF 3.9 at 28; see FOF 2.18; EX A-5. She told Eugster that she distrusted Roger and wanted Eugster to remove him from control of her life and her financial affairs. FOF 2.18; FOF 2.23 at 7; TR 410. Marion believed by removing Roger from control of her affairs that she could rekindle her relationship with him. See FOF 2.23 at 7; TR 764.

On June 30, 2004, Eugster sent a letter to Marion purporting to “fully disclose” the implications of having him represent her as a fiduciary. EX A-12. The letter further states:

If I serve, my loyalty with regard to your affairs will be to you and you alone. . . . It is my understanding that you wish to be in control of your estate as long as this is possible.

EX A-12.

Eugster inquired about John’s trust, but did nothing else to recover assets belonging to Marion that were used improperly to overfund the trust, such as the life insurance proceeds. FOF 2.22 at 6.⁷

Eugster set up Marion’s estate planning so that he could have control over her assets. Amended FOF 2.26 at 10. He created a living trust placing all of Marion’s assets into the trust. EX A-16. Under the terms of the trust, Marion was designated as trustee. EX A-16. Eugster

⁷ Marion’s subsequent lawyer, Braff, recovered assets valued at \$129,000 - \$135,000 for her from the trust being administered by Roger. FOF 2.22 at 6-7.

was designated as successor trustee if Marion was found to be incompetent by a medical doctor, and Roger was second successor trustee. EX A-16 at 8-9. Eugster had Marion execute a new durable power of attorney designating himself as attorney-in-fact and Roger as successor attorney-in-fact. EX A-17. Eugster had Marion execute a new will naming Eugster as the personal representative. EX A-15 at 1. Under this scheme, if Marion were ever found to be incompetent by her doctor, Eugster would have control of her assets as trustee of the living trust. Amended FOF 2.26 at 10. On July 9, 2004, Marion executed the will, trust, and power of attorney prepared by Eugster. EX A-14; EX A-15; EX A-17. The reason that Roger was named as a successor is unknown. Amended FOF 2.21 at 6.

Marion regularly contacted Eugster regarding concerns she had about Roger. FOF 2.26 at 8. Marion directed Eugster to retrieve certain personal property that Roger had removed from her residence. FOF 2.23 at 11; EX A-25; EX A-28. Eugster did not try to retrieve the personal property, but left it with Roger "in direct contravention of Marion's objectives." FOF 2.23 at 11; Amended FOF 2.21 at 6; EX A-30; EX A-36. By early August 2004, Marion and Roger were not on speaking terms. TR 268; EX A-60 at 4.

C. MARION TERMINATES EUGSTER

On August 13, 2004, Eugster sent Marion a letter extolling Roger's virtues. Amended FOF 2.29 at 7; EX A-30. On September 1, 2004, Eugster sent Marion a letter recommending that she meet with Roger regarding the sale of her house. EX A-36. Roger had previously discussed with Eugster that the house was supposed to be gifted to him and that Marion was "violating" that promise. EX A-23; TR 264. Eugster's letter also informed Marion that Roger was "safekeeping" the items that she had previously directed Eugster to retrieve from Roger. EX A-36. Marion became concerned that Eugster was not representing her interests. Amended FOF 2.29 at 7.

In early September 2004, Marion hired lawyer Braff to represent her.⁸ FOF 2.30 at 9. She also hired professional trustee Steven Trefts (Trefts) and his company, Northwest Trustee and Management Services, to protect her from Roger and Eugster. TR 388. Marion executed estate planning documents prepared by Braff designating Trefts as successor trustee to her trust and attorney-in-fact and revoking the durable power of attorney and successor trustee powers previously assigned to Eugster. EX

⁸ Page 14 of Eugster's brief states that "Braff acknowledged that Roger was what Eugster described him as, a dutiful and honest son." This statement mischaracterizes Braff's testimony. Braff actually testified that he did not agree with that statement, and that at the time he read the statement [in Eugster's letter to Marion (EX A-30 at 2)], he did not know all of the things about Roger that he later discovered. TR 93.

A-38; EX A-39; EX A-43.

On September 9, 2004, Eugster received a letter from Braff, also signed by Marion (1) informing Eugster that Marion had hired Braff to represent her, (2) informing Eugster that Marion had revoked the power of attorney assigned to Eugster, and (3) asking Eugster to send him Marion's client file. FOF 2.30 at 9; EX A-37. A copy of the revocation of the durable power of attorney previously granted to Eugster was enclosed with the letter. FOF 2.30 at 9; EX A-38. Braff needed Marion's client file because it contained Marion's checkbook and other financial information that Eugster received from Roger. TR 36; see Amended FOF 2.21 at 6.

On September 9, 2004, Eugster called Roger and asked him to join him in a guardianship action against Marion. TR 273. Eugster told Roger about the substance of Marion's contacts with him. TR 273-74.

On September 13, 2004, Eugster sent a letter to Braff refusing to recognize him as Marion's attorney, refusing to acknowledge the revocation of the durable power of attorney, and claiming that Marion was incompetent. FOF 2.30 at 9; EX A-40. Eugster sent a copy of the letter to Roger. EX A-40. Eugster refused to release Marion's client file. FOF 2.30 at 9. Eugster vehemently refused to be terminated as Marion's lawyer because he would lose access to her money. FOF at 28.

Trefts, a lawyer with 40 years of experience in dealing with

guardianships and with extensive experience working with incapacitated clients (TR 385-87), had no concerns about Marion's capacity and opined that she was "absolutely clear as a bell." TR 392. When he learned that Eugster was alleging that Marion was incompetent and might pursue a guardianship, he met with Eugster on September 14, 2004. TR 392. When Trefts explained that Marion was competent and that a guardianship would be an unnecessary waste of estate resources, Eugster reacted by becoming defensive and angry. TR 392.

On September 16, 2004, Marion resigned as trustee of her living trust and appointed Trefts as trustee. EX A-56 at 5. She also revoked any powers given to Eugster under the living trust.⁹ EX A-43. On September 17, 2004, Eugster received a letter from Braff again requesting Marion's file and informing him that Marion "fully expects any and all communications with you to remain confidential and not be passed on to Roger Samuels." EX A-42. Braff's letter also asked Eugster to advise him of any significant changes in Marion's competence "since her Will, Trust, and Power of Attorney were prepared and signed in July when witnesses verified that she appeared to be '... of sound mind.'" EX A-42.

Eugster did not respond to Braff's inquiry regarding Marion's

⁹ Page 13 of Eugster's brief incorrectly states that Eugster and Roger remained trustees on Marion's Living Trust at the time they filed the guardianship action.

competency and did not release Marion's client files as requested. TR 37; FOF 2.38 at 16. On September 20, 2004, Eugster sent Roger a proposed petition for guardianship stating that Marion was incompetent and had become "somewhat delusional and that she believed that [Roger] is somehow out to take advantage of her when this is not the case and that she has been advised of this by [Eugster]." EX A-44 at 2; FOF 2.27 at 12.

On September 22, 2004, as a result of Eugster's allegations, Braff had Marion examined by Dr. Patrick Shannon, her personal physician, to verify her competence. TR 103. On September 22, 2004, Dr. Shannon issued a letter stating that he found Marion to be competent. Braff sent the letter to Eugster on October 5, 2004. EX A-46; see EX A-51 at 3.

D. EUGSTER COMMENCES GUARDIANSHIP ACTION AGAINST MARION

On September 27, 2004, Eugster commenced a guardianship action against Marion, nominating Roger as her guardian. FOF 2.32 at 14; EX A-47. Eugster never consulted with Marion or gained any approval from her to file the guardianship or disclose any confidences or secrets. FOF 2.38 at 13. The Petition stated that Eugster "has been the attorney for Mrs. Stead and is currently the attorney for Mrs. Stead." EX A-47 at 4 (emphasis added). The Petition requested an order approving Eugster's attorney's fees and costs connected with the guardianship and payment of

all fees and costs for work performed by Eugster. EX A-47 at 5-6.

Eugster filed the guardianship action without any independent investigation that would have led to a petition well grounded in fact.¹⁰ FOF at 27; FOF 2.41. He made no effort to confer with Marion's health care providers regarding Marion's competency. FOF 2.39-2.41. There was no objective evidence of her declining competence. FOF 2.41; FOF 2.28 at 12-13; FOF at 26. At the time Eugster commenced the guardianship, his last contact with Marion was on August 3, 2004 (EX A-78 at 3; TR 435), eight weeks earlier, and Roger's last conversation with Marion was in July 2004. TR 268; EX A-60 at ¶¶ 16-18.

Eugster filed the guardianship to install himself as trustee and attorney-in-fact over Marion's assets without familial oversight. Amended FOF 2.26 at 10; FOF 2.42; FOF 2.34. He also sought the fees that accompanied administering the trust and pursuing the guardianship. FOF 2.34; FOF at 22. Eugster's objectives in filing the guardianship action were the "absolute opposite" of the objectives Marion had hired him to accomplish. FOF at 30; see FOF at 22, 29. He knew that by making Roger the guardian of Marion's person, the family relationship

¹⁰ Page 15 of Eugster's brief contends that by filing the guardianship action he was attempting to protect Marion from Braff and Trefts, citing to Trefts' October 8, 2004 letter as the basis for his suspicions. But Eugster's petition for guardianship was filed eleven days before Treft's letter was sent. EX A-55.

would be permanently ruptured. FOF 2.34. Eugster used the knowledge he gained during his representation of Marion to destroy her relationship with Roger. Amended FOF 2.35.

On October 7, 2004, Eugster had the Sheriff personally serve Marion with the guardianship pleadings in a common room of the assisted-living facility in front of her friends and other elderly residents. FOF 2.44; FOF at 27; TR 381. Marion was humiliated by the service. FOF 2.44; TR 381. The personal service left the impression that Eugster was actively working with Roger against her. FOF 2.44; FOF at 27.

On October 5, 2004, Eugster received Braff's motion for an order authorizing the listing of Marion's residence for sale and a motion to show cause why Eugster should not be allowed to continue as the attorney for Marion or the petitioner of the guardianship. EX A-52. In his motion, Braff contended that Eugster violated a number of Rules of Professional Conduct (RPC), including RPC 1.6 and RPC 1.9. EX A-57 at 3-4.

On October 5, 2004, Eugster received a copy of the September 22, 2004 letter from Dr. Shannon stating that Marion was competent and was notified that Marion appointed Trefts as trustee of her living trust. See EX A-51 at 3; EX A-52 at 1. On October 19, 2004, Eugster received a second report from Dr. Shannon regarding a follow-up examination of Marion on September 30, 2004, concluding that "I find the patient [Marion] to be

very competent.” EX A-62 at 7; EX A-64 at 6. Braff’s motion and Dr. Shannon’s report did not deter Eugster from pursuing the guardianship. See EX A-64.

E. DISMISSAL OF GUARDIANSHIP

During the October 19, 2004 hearing on Marion’s motion for authorization to sell personal property and list her residence for sale, Eugster objected to the motion claiming that the trust was not a party to the guardianship proceeding and that he was the trustee. EX A-64 at 3. Eugster’s position effectively hamstrung Marion’s efforts to sell her residence and personal property and pitted Eugster against Marion. TR 106, 135-136. Eugster claimed that, in his role as trustee, he had decided that Roger could continue to possess Marion’s personal property, notwithstanding her prior directions to retrieve the property from Roger. EX A-64 at 3.

At the October 19, 2004 hearing, the Court entered an order authorizing Braff to represent Marion in the guardianship action. FOF 2.37. The Court also expressed concern about Eugster’s ethical conduct and directed Eugster to brief the issue. FOF 2.37; EX A-64 at 6. Two days later, Eugster sent a letter declining to act as attorney-in-fact, successor trustee, and guardian of Marion’s estate and asserting that Roger was the attorney-in-fact, trustee, and guardian under the terms of the

documents Eugster prepared. EX A-65. Eugster executed the declination because he had nothing left to gain financially following the court's ethics inquiry and the appointment of Braff. FOF 2.37 at 16; FOF at 27. By executing the declination, Eugster knew that if Marion was found to be incompetent, Roger would be in complete control of Marion and her assets, which was directly contrary to Marion's objectives. Amended FOF 2.26 at 10.

By letter dated October 25, 2004, Braff asked Eugster to provide Marion's client file prior to the hearing scheduled for November 9, 2004. EX A-66. Eugster refused to do so until the guardianship proceeding was dismissed. EX A-76; see EX A-73.

On October 26, 2004, the Guardian ad Litem (GAL) in Marion's guardianship action, James Woodard (Woodard), issued a report concluding that (1) Marion was capable of managing her personal and financial affairs and did not need a guardian, and (2) if a guardian were to be appointed, it should not be Roger. EX A-67; Appendix 3. Woodard's conclusion was supported by Dr. Shannon's report, Woodard's interview with Marion, and his interviews with her mental health professionals (Dr. Duane Green, Joyce Lingerfeld), her lawyers and other professionals (Summer Stahl, Stephen Trefts, Sandy Calbreath, Paul Buxton, and David Hellenthal), her friends (Marilyn Haney, Lynn McCain, Dennis Sweeney,

and Ora Mae Sackman), and the administrator at Parkview (Mary Wear). EX A-67. Eugster had not contacted any of these individuals regarding Marion's competency before pursuing the guardianship.

On November 17, 2004, Eugster withdrew his petition for guardianship, leaving Roger as the sole petitioner in the guardianship action. EX A-72. On February 1, 2005, the court entered a stipulated order dismissing the guardianship. EX A-76.1. Eugster subsequently returned Marion's client file. See EX A-76. The guardianship proceedings cost Marion \$13,500 in legal fees and costs. FOF 2.32 at 9; TR 384. After the guardianship proceedings were dismissed, Braff pursued the assets that had been used to overfund John's trust, the assets that Marion initially hired Eugster to pursue. FOF 2.18; FOF 2.22 at 6-7; see EX A-5; EX A-8; EX A-77. The guardianship proceedings delayed Braff's pursuit of these assets. TR 58. Through Braff's efforts, Roger returned assets belonging to Marion valued at between \$129,000 - \$135,000. FOF 2.22 at 7; TR 57.

The guardianship action destroyed what was left of Roger and Marion's relationship. Amended FOF 2.26.1 at 10. The last time they spoke was on October 19, 2004. TR 267. In November 2006, Marion died. TR 636. She was 90 years old at the time. Roger did not attend her memorial service. FOF 2.15. Marion's will left no gifts to Roger or his

daughter Emilie. EX A-82. Instead, she left most of her estate to Roger's ex-spouse and an animal shelter. EX A-82. In February 2007, Roger commenced an action contesting Marion's will and trust. TR 282.

F. PROCEDURAL FACTS

On March 6, 2006, a review committee ordered this matter to hearing. BF 1. On March 29, 2006, the Association filed the formal complaint. BF 2. The hearing was held during March 5-9, 2007.

On May 24, 2007, the Hearing Officer filed her decision, concluding as follows:

- Count 1. Eugster violated RPC 1.2(a).¹¹ Disbarment is the presumptive sanction for Eugster's misconduct under American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & 1992 Supp.) (ABA Standards) § 7.1.
- Count 2. Eugster violated RPC 1.6(a). Suspension is the presumptive sanction for Eugster's misconduct under ABA Standards § 4.22.
- Count 3. Eugster violated RPC 1.9(b) and RPC 1.8(b).
- Count 4. Eugster violated RPC 1.9(a). Suspension is the presumptive sanction under ABA Standards § 4.32.
- Count 5. Eugster violated RPC 1.15(d). Suspension is the presumptive sanction under ABA Standards § 4.12.
- Count 8. Eugster violated RPC 3.4(c) by violating Washington

¹¹ The former RPC apply because Eugster's conduct preceded the adoption of the current RPC in September 2006. All references to the RPC will be to the former RPC unless otherwise indicated. The applicable former RPC are attached as Appendix 4.

Superior Court Civil Rule (CR) 11. Disbarment is the presumptive sanction under ABA Standards § 6.21.

- Count 9. Eugster violated RPC 8.4(d). Disbarment is the presumptive sanction under ABA Standards § 7.1.

FOF at 21-30, attached as Appendix 2. The Hearing Officer recommended that Eugster be disbarred and that he pay \$13,500 in restitution to Marion's estate. FOF at 30-33.

On January 25, 2008, the Disciplinary Board unanimously adopted the Hearing Officer's decision with several modifications to clarify the findings. Amended FOF, BF 157, attached as Appendix 1.

IV. SUMMARY OF ARGUMENT

Eugster appeals the Board's unanimous recommendation for disbarment, asserting that his version of the facts should be accepted as true and that his misconduct was permissible under RPC 1.13.

Eugster's challenges to the findings of fact are deficient because he failed to adequately identify the challenged findings as assignments of error, failed to include his legal argument within his brief, and failed to demonstrate that the challenged findings are not supported by substantial evidence.

Eugster's contention that his conduct was permissible under RPC 1.13 and other statutes is based on the faulty premise that this Court must accept his version of the facts as true without demonstrating that the

contrary findings of fact are not supported by substantial evidence. The unchallenged findings, which are verities on appeal, demonstrate that RPC 1.13 does not apply to Eugster's conduct because he did not "reasonably believe" that Marion could not act in her own best interest. The unchallenged findings determined that Eugster engaged in multiple acts of misconduct for his own financial purposes and had no reasonable basis to believe that Marion was incompetent.

The unanimous Board correctly recommended disbarment because (1) disbarment is the presumptive sanction for at least three of the seven counts of misconduct and (2) the five applicable aggravating factors outweigh the one mitigating factor. Eugster has failed to present any analogous cases demonstrating that disbarment is not a proportionate sanction for his misconduct. Eugster betrayed his client's loyalty and tried to rob her of her autonomy. This Court should affirm the Board's unanimous recommendation to disbar Eugster.

V. LEGAL ARGUMENT

A. STANDARD OF REVIEW

This Court gives considerable weight to the hearing officer's findings of fact, especially in regard to the credibility of witnesses, and will uphold those findings so long as they are supported by "substantial evidence." In re Disciplinary Proceeding Against Poole, 156 Wn.2d 196,

209, 125 P.3d 954 (2006). “Substantial evidence exists if a rational, fair-minded person would be convinced by it. Even if there are several reasonable interpretations of the evidence, it is substantial if it reasonably supports the finding.” Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C., 152 Wn.2d 387, 391, 97 P.3d 745 (2004) (citations omitted); In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 59-60, 93 P.3d 166 (2004).

This Court reviews conclusions of law de novo. Poole, 156 Wn.2d at 209. It also reviews sanction recommendations de novo, but in light of the Disciplinary Board’s “unique experience and perspective in the administration of sanctions,” the Court departs from the Board’s sanction recommendation only if it can articulate a specific reason to do so. In re Disciplinary Proceeding Against Egger, 152 Wn.2d 393, 404-05, 98 P.3d 477 (2004) (quotations omitted). While the Court has plenary authority over lawyer discipline, it generally affirms the Board’s sanction recommendation unless “it can articulate a specific reason to reject it.” Guarnero, 152 Wn.2d at 59 (quotations omitted). The Court hesitates to reject the Board’s recommendation if it is unanimous. Id.

B. EUGSTER’S ASSIGNMENTS OF ERROR ARE NOT SUPPORTED BY ARGUMENT AND MAY NOT BE CONSIDERED

Assignments of error that are not supported with argument and

citations to authority are not considered. State v. Fortun, 94 Wn.2d 754, 756, 626 P.2d 504 (1980); Howell v. Spokane & Inland Empire Blood Bank, 114 Wn.2d 42, 46, 785 P.2d 815 (1990).

Eugster's brief contains two assignments of error. The first claims that the findings of fact are confusing and deny Eugster due process. The second claims that the Hearing Officer erred by denying Eugster's various motions to dismiss. Eugster's brief fails to present argument on either assignment of error. Instead, his brief contains a footnote referring to the briefing he previously submitted on the issues. It appears that Eugster is attempting to incorporate by reference his briefing to the Hearing Officer, the Chief Hearing Officer, and the Board. But a party may not incorporate by reference parts of its trial brief into its appellate brief, as this would violate the page limit for briefs to the prejudice of the other party. US West Communications, Inc. v. Utils. & Transp. Comm'n, 134 Wn.2d 74, 111-12, 949 P.2d 1337 (1997). State v. Kalskosky, 121 Wn.2d 525, 540 n.18, 852 P.2d 1064 (1993). Neither of Eugster's assignments of error may be considered because they are not supported by argument and citations.

C. EUGSTER'S FAILURE TO BRIEF CHALLENGED FINDINGS MAKES THEM VERITIES ON APPEAL

Eugster's challenges to specific findings of fact that are contained in

his appendix do not comply with the rules, and are legally insufficient to warrant consideration.

The Rules of Appellate Procedure (RAP) require the appellant to set forth assignments of error for each challenged finding:

A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

RAP 10.3(g); In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 895, 175 P.3d 1070 (2008) (brief that fails to make separate assignments of error for each challenged finding of fact is insufficient to challenge findings). A general assignment of error to the “findings of fact,” or to “the findings relating to X,” is insufficient under the RAP 10.3(g). 3 Karl B. Tegland, Washington Practice: Rules Practice, RAP 10.3 at 33 (6th ed. 2004). Eugster’s brief fails to set forth any assignments of error for the findings of fact that he appears to be challenging.¹²

The RAP provide that “an appendix may not include materials not contained in the record on review without permission from the appellate court.” RAP 10.3(a)(8). “[A]n appendix may not contain argument and may not be used to circumvent the rules governing the length of a brief.”

¹² Eugster’s brief also fails to comply with RAP 10.4(c), which requires the text of challenged findings to be included in the brief or appendix.

Washington Appellate Practice Deskbook §19.7(14) (3d ed. 2005). The RAP limits the appellant's brief to 50 pages. RAP 10.4(b). The RAP require the text of any brief to appear double spaced. RAP 10.4(a)(1).

Eugster's appendix should not be considered because (1) it contains argument, not materials contained in the record, and (2) it would cause the brief to exceed the 50 page limit if properly formatted to the double spaced requirement.

Assuming that the argument contained in Eugster's appendix could be considered, it is legally deficient. An appellant's brief is insufficient if it contains merely a recitation of the facts that are favorable to the appellant while ignoring other testimony. In re Disciplinary Proceeding Against DeRuiz, 152 Wn.2d 558, 572, 99 P.3d 881 (2004); In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (Court declined to scour the record and construct arguments for counsel). The failure to sufficiently brief challenged findings makes those findings verities on appeal. In re Disciplinary Proceeding Against Whitney, 155 Wn.2d 451, 467, 120 P.3d 550 (2005). Eugster's brief merely presents his version of the facts and fails to brief the challenges to findings sufficiently. Thus, it cannot be considered. Burtch, 162 Wn.2d at 896.

D. THE HEARING OFFICER AND BOARD PROPERLY DETERMINED THAT EUGSTER'S DEFENSES WERE WITHOUT MERIT

The focus of Eugster's argument is that the Hearing Officer and Board erred by rejecting his defenses. A hearing officer may find misconduct by drawing reasonable inferences from the facts. See In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d 64, 82-84, 101 P.3d 88 (2004). When proving misconduct, the Association is not required to disprove the other theories presented by the respondent. Guarnero, 152 Wn.2d at 60-61. The Hearing Officer and Board considered and rejected Eugster's defenses as described below.

1. The Hearing Officer and Board Properly Determined that Eugster's Misconduct Was Motivated by His Own Financial Interests, Not the Interests of Marion

Eugster contends that he acted to fulfill his obligations to Marion. A hearing officer's determination of a respondent lawyer's state of mind is a factual determination and, as such, is given great weight. In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 744, 122 P.3d 710 (2005). The Hearing Officer's decision, as adopted by the Board, found that Eugster "betrayed" and "exploited" Marion for financial gain.¹³

¹³ Some of the findings set forth below are located in the conclusion of law section. Findings of fact should be treated as findings of fact, notwithstanding that the finding is commingled with a conclusion of law or otherwise mislabeled. Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963).

- “[Marion] was an elderly woman whose attorney [Eugster] betrayed her by exploiting the difficult relationship she had with her son, leaving her and her estate isolated from family oversight. Respondent didn’t just omit an investigation, he manipulated the judicial system for his own benefit.” FOF at 26.
- “Respondent didn’t just engage in a conflict of interest, he prepared the action and then asked Roger to join him in an action that would resulted [sic] in the absolute opposite of the objective his client had hired him to accomplish.” FOF at 30.
- “[Eugster] wanted control of [Marion’s] money.” Amended FOF 2.26.1 at 10. “The only apparent reason for this filing would be to install Respondent as trustee and as attorney-in-fact over [Marion’s] assets.” FOF 2.42. “He sought control over his client’s substantial estate and the fees that accompanied that trust.” FOF at 22.
- “There was only one reason for Mr. Eugster to be so vehement in his refusal to be terminated as Ms. Stead’s lawyer. He would lose access to her money.” FOF at 28. “Respondent Eugster substituted his judgment for hers [Marion], he took her money, not to achieve her objectives, but to impose his own objectives.” FOF at 28-29.
- “Respondent declined the power of attorney two days after the court asked him to brief those [conflict of interest] issues and after Mr. Braff was appointed counsel for [Marion] in the guardianship action. He had nothing left to gain.” FOF 2.37 at 16; FOF at 27.

The findings by the Hearing Officer and the Board that Eugster’s misconduct was the result of his attempt to gain control of Marion’s assets and exploit Marion’s difficult relationship with her son are supported by substantial circumstantial evidence:

- Eugster was informed that Marion did not trust Roger and wanted him removed from control over her life and financial affairs believing that eliminating Roger from control would rekindle their

relationship. TR 410; TR 763-64; TR 814.

- Eugster had Marion execute a power of attorney naming himself as her attorney-in-fact, and a trust naming himself as successor trustee. EX A-16; EX A-17.
- Eugster had witnesses sign declarations that Marion was competent and of sound mind when she executed the will and power of attorney on July 6, 2004. EX A-14; EX A-15.
- Eugster's notes of his conversations with Marion imply that she understood the issues regarding the special needs trust, the insurance, her assets and what she hired Eugster to do. See EX A-4; EX A-5; EX A-9, EX A-10.
- Eugster's letters to Marion imply that he believed she was competent. EX A-12; EX A-30; EX A-36. For example, on August 24, 2004, Eugster felt that Marion could handle the sale of her residence. See EX A-31; EX A-32.
- The first time that Eugster raised the issue of Marion's competency was on September 9, 2004, the day he was terminated. TR 273-74; see EX A-40. At that time, the last direct contact he had with Marion was on August 3, 2004. EX A-78 at 3; TR 435.
- Eugster claimed that Marion was incompetent without any independent investigation as to Marion's competence. See EX A-79. He made no effort to contact any professionals or individuals who had daily contact with Marion. See EX A-79. The only professionals who Eugster had contacted, Braff and Trefts, opined that Marion was competent. TR 392; TR 37-38; see EX A-42. Eugster did not reply to Braff's request to advise him of the factual basis for his claim that Marion was incompetent. TR 37; EX A-42.
- Eugster filed the guardianship action as Marion's attorney without her knowledge or consent. TR 444-46.
- At the time Eugster filed the guardianship, Marion was in an assisted living facility with people to check on her, regular meals, social contact; friends visited, she was safe, she had a lawyer, and an independent trustee was looking after her finances. See EX A-

67.

- Eugster disclosed client confidences to Roger, including that Marion did not trust Roger and thought that he was taking advantage of her. EX A-44 at 1-2; TR 273-74.
- Eugster filed a guardianship action against Marion, nominating Roger as her guardian in direct contravention of Marion's objectives. EX A-47 at 3; see EX A-12.
- At the October 19, 2004 hearing, Eugster claimed that he was now trustee over Marion's assets. EX A-64 at 3.
- Eugster declined his position as trustee and attorney-in-fact only after receiving Dr. Shannon's report that Marion was competent, and being directed by the Court to brief the ethical issues regarding his conflict of interest. EX A-65; EX A-64 at 6.

Page 17 of Eugster's brief claims that the basis for his "impression" that Marion was not competent was that (1) she desired to contest John's will, (2) she had constant contact with her stock broker, Paul Buxton (Buxton), (3) her frequent communications with Eugster's office, and (4) her decisions to sell the home and furnishings without the professionals recommended by Eugster. None of this conduct connotes incompetency nor does it overcome the substantial evidence that supports the Hearing Officer's findings. First, Marion's concern about the special needs trust in John's will was warranted because \$130,000 of Marion's assets were improperly used to overfund the trust administered by Roger and Roger refused to disburse any trust assets to Marion. FOF 2.22 at 6-7. Second, Buxton testified that he did not consider Marion's calls to his

office as improper in anyway and that her calls gave him no reason to question her competency. TR 210. Third, Marion's frequent contacts with Eugster's office were warranted because Eugster would not follow through on tasks, such as retrieving Marion's personal property from Roger. See EX A-13, EX A-20, EX A-21, EX A-25, EX A-28. Fourth, there is nothing about a client wanting to hire his or her own real estate agent instead of using one recommended by a lawyer that connotes incompetence. See EX A-67 at 13-14 (discussing Marion's contacting a realtor). If anything, the conduct described above demonstrates that Marion was fully competent and wise enough to terminate Eugster and hire other counsel when she realized that Eugster was not pursuing her objectives.

Page two of Eugster's brief cites to the following statement in Dr. Shannon's report (EX A-62 at 6) out of context as grounds that Marion was incompetent: "she has psychologic conditions with major depressive disorder." EX A-62 at 6. Dr. Shannon's report repeatedly concludes that Marion is competent and reflects that Marion's depression was being successfully treated and had no impact on her competency. EX A-62 at 6-7. Moreover, there is no evidence in the record that Eugster knew or suspected that Marion was depressed. Eugster received Dr. Shannon's report on October 19, 2004, three weeks after he filed the guardianship.

EX A-64 at 6. Two days after receiving Dr. Shannon's report, Eugster filed his declination to serve as successor trustee and attorney-in-fact. EX A-65. He withdrew his guardianship petition within a month. EX A-72.

Eugster's self-serving statements regarding his state of mind and motivations were properly rejected by the Hearing Officer and the Board, and directly contradict the findings, which are verities on appeal. Whitney, 155 Wn.2d at 467. Therefore, his statement of facts and factual arguments must be rejected.

2. **The Hearing Officer and Board Properly Rejected Eugster's Defense that His Actions Were Authorized Under RPC 1.13(b)**

Eugster claims that the Hearing Officer and Board erred by not accepting his defense that his actions were authorized by RPC 1.13(b), which provides as follows:

(b) When the lawyer reasonably believes that the client cannot adequately act in the client's own interest, a lawyer may seek the appointment of a guardian or take other protective action with respect to a client.

Eugster could not seek a guardianship under RPC 1.13(b) because the rule "governs situations in which a client's impairment is so severe that the client cannot effectively participate in a client-lawyer dialog at all, and thus cannot direct the lawyer's work or act on her advice." G. Hazard, Law of Lawyering § 18.6 at 18-44 (3d ed. Supp. 2005). Here, there was no evidence whatsoever that Marion could not participate in a client-

lawyer dialog. Eugster's own notes from his conversations with Marion demonstrate her ability to participate in a client-lawyer dialog and make decisions. EX A-4, EX A-5, EX A-9. RPC 1.13(b) is intended to shield the client; it is not to be used as a means to betray a client's trust and gain access to the client's assets, as the unanimous Board and Hearing Officer found here. FOF 2.42; FOF 3.11; FOF at 22, 26, 29, 30.

In addition, Eugster could not seek a guardianship under RPC 1.13(b) because he did not have a "reasonable belief" that Marion could not act on her own. Page two of Eugster's brief erroneously claims that the term "reasonably believes" in RPC 1.13(b) denotes a purely subjective standard. He is mistaken. The terminology section of the RPC provides that "'reasonably believes' when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable." RPC 1.1(i) (emphasis added); see also RPC 1.1(h) ("'Reasonable' . . . when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.")). Eugster also claims that there is an "unfair double standard which to judge an attorney's conduct" under RPC 1.13(b). There is no double standard. The standard is simply one of objective reasonableness.

After considering Eugster's testimony and demeanor at the hearing, the Hearing Officer found that Eugster's claim that he was acting

under former RPC 1.13¹⁴ was not credible. FOF 2.25 at 11. As discussed above, the Hearing Officer found, as a factual matter, that Eugster's state of mind and motivation for seeking the guardianship was his own financial gain, not Marion's benefit. FOF 2.42; FOF 2.26 at 11; FOF 3.11; FOF at 22, 26, 28-30. The Board affirmed the Hearing Officer's findings.

Moreover, the Hearing Officer and Board were correct in finding that such a belief was not reasonable under the circumstances. FOF at 23. The Hearing Officer found that "there was no objective evidence of declining competence" and that Eugster "did not do a reasonable inquiry." FOF 2.41. Eugster made no reasonable investigation into the facts before filing the baseless guardianship that was aimed at taking Marion's autonomy. FOF 2.39-2.41.

Eugster's assertion on page 27 of his brief that the Hearing Officer and Board erroneously applied the current RPC 1.14(b), the successor to former RPC 1.13(b), instead of RPC 1.13(b) is unsubstantiated speculation. There are no substantive changes between former RPC 1.13(b) and current RPC 1.14(b). Even assuming that the Hearing Officer applied the amended rule, under any view of the circumstances, Eugster's conduct was not reasonable and was done for an improper purpose. FOF

¹⁴ The Hearing Officer's finding actually refers to RPC "1.16." This is a typographical error - the Hearing Officer was plainly referring to former RPC 1.13, which was Eugster's defense.

at 25. The Board and Hearing Officer properly concluded that Eugster's actions were motivated by self interest. FOF at 26, 28-29, 30; FOF 2.42.

Moreover, Eugster's RPC 13(b) defense is legally insufficient because he did not have authority under RPC 1.13(b), which applies to a "client," not a former client. This is particularly true when Marion was adequately protected by her lawyer, Braff, a trustee and attorney-in-fact (Trefts), and was living well at an assisted-living facility. FOF 2.38 at 13. Eugster's own assessment of what is in the best interests of Marion is not a correct basis to seek a guardianship under RPC 1.13(b). ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 96-404 (1996) (ABA Model Rule 14(b) does not authorize the lawyer to take action because the client is not acting in what the lawyer believes to be the client's best interest, but only when the client "cannot adequately act in the client's *own* interest.")

Finally, Eugster's argument that due process requires this Court to grant him "qualified immunity" merely because he asserts that he acted pursuant to RPC 1.13 is without merit. There is no due process requirement to accept as true a respondent lawyer's statements and defenses regarding his motivations, especially when the lawyer fails to demonstrate that the findings rejecting his defenses are in error. Eugster's due process argument is based on the premise that he was acting as a "conscientious lawyer." The Hearing Officer and Board found otherwise.

3. Eugster Failed to Raise the “Vulnerable Adult Services” Statute as a Defense and the Statute Does Not Apply to His Conduct

Eugster claims that the Hearing Officer and Board erred because he acted in compliance with RCW 74.34, the Washington Vulnerable Adult Statute (WVAS). Eugster did not raise WVAS as a defense during the hearing. This Court should not consider it. RAP 2.5(a); In re Disability Proceeding Against Diamondstone, 153 Wn.2d 430, 441- 42, 105 P.3d 1 (2005) (declining to reach issue not raised at hearing because Association was deprived of opportunity to develop record).

Moreover, Eugster’s argument is frivolous because his conduct in this case is not remotely related to conduct covered by the WVAS. That statute deals with reporting abuse and neglect to the Department of Social and Health Services (DSHS) and law enforcement agencies. RCW 74.34.020(4); RCW 74.34.05. There is no evidence that Eugster ever made a report to DSHS or the law enforcement agency about abuse. The WVAS allows reporting “when there is reasonable cause to believe an adult is being . . . financially exploited.” RCW 74.34.035. As discussed above, the Hearing Officer and Board found that Eugster’s actions in pursuing the guardianship were not reasonable but were pursued for Eugster’s benefit. FOF 2.41; FOF at 26-27. There is no evidence of financial exploitation by Trefts or Braff. To the contrary, they prevented

Eugster from gaining control of Marion's assets. See EX A-76.1. Unlike Eugster, Braff recovered Marion's assets from Roger valued at \$129,000 - \$135,000. FOF 2.22 at 6-7. The statute is inapplicable.

E. THE HEARING OFFICER APPLIED THE CORRECT STANDARD OF PROOF

Eugster claims error because the "clear preponderance of evidence" standard of proof was applied instead of the "clear and convincing evidence" burden of proof. In January 2008, this Court resolved this issue: "We have consistently held that clear preponderance of evidence is the relevant burden in disciplinary proceedings, and there is no reason to change the burden at this time, linguistically or otherwise."

Burtch, 162 Wn.2d at 895.¹⁵

Eugster erroneously claims that the Hearing Officer applied the wrong standard of proof in Count 1 because the conclusion states that the count was "proved beyond a doubt." Eugster's argument is without merit. When Eugster filed a motion challenging the standard of proof, the

¹⁵ Contrary to Eugster's assertion, there is no difference between "clear preponderance of evidence" and "clear and convincing evidence." Nguyen v. State, Dep't of Health Medical Quality Assurance Comm'n, 144 Wn.2d 516, 525, 529, 533, 29 P.3d 689 (2001) ("clear and convincing evidence" used interchangeably with "the intermediate clear preponderance standard" and "clear preponderance" standard), cert. denied, 535 U.S. 904 (2002); Vanasse v. Cavey, 167 Wash. 238, 241, 243, 9 P.2d 60 (1932) (both standards used interchangeably); El Ranco, Inc. v. First Nat'l Bank of Nevada, 406 F.2d 1205, 1216 (9th Cir. 1968) (finding that "clear and convincing evidence" and "clear preponderance of evidence" set out the same standard of proof), cert. denied, 396 U.S. 875 (1969).

Hearing Officer specifically found that the “clear preponderance of evidence” standard applies. FOF at 33. Throughout her decision, the Hearing Officer repeatedly made it clear that she was applying the “clear preponderance of evidence” standard of proof. FOF 3.20; FOF at 24, 25, 28, 33. The “beyond a doubt” language used for Count 1 was superfluous. See FOF 2.21 at 10. The Hearing Officer was not applying a different standard; she merely was emphasizing that it was uncontested that Eugster did not abide by Marion’s decisions to eliminate Roger from any control over her affairs. FOF 2.21. The Board specifically clarified the matter by amending the conclusion of law in FOF 3.1 to state that Count 1 was proven by a clear preponderance of evidence. Amended FOF 3.1 at 12. Eugster did not challenge Amended FOF 3.1.

In any event, even if the Hearing Officer applied a “beyond a doubt” standard, this standard is higher than the “clear preponderance” standard; it is even greater than the “beyond a reasonable doubt” standard. Therefore, if there is error, it was harmless.

F. THE HEARING OFFICER AND BOARD PROPERLY FOUND THAT EUGSTER VIOLATED THE RPC AND THAT DISBARMENT IS THE APPROPRIATE SANCTION FOR EUGSTER’S MISCONDUCT

The Hearing Officer and Board correctly concluded that the Association proved seven counts of misconduct by a clear preponderance

of evidence. Disbarment is the presumptive sanction for Count 1, Count 3, Count 4, Count 8, and Count 9, and suspension is the presumptive sanction for Count 2 and Count 5.

1. Count 1: The Hearing Officer and Board Properly Found that Eugster Violated RPC 1.2(a) and that Disbarment Is the Presumptive Sanction for that Violation

The Hearing Officer and Board correctly determined that Eugster violated RPC 1.2(a) by knowingly and intentionally failing to abide by his client Marion's objectives of representation, which were to remove her son Roger from control of her affairs, re-take control of her financial affairs, and re-claim property she believed Roger had kept in violation of her wishes. Amended FOF 3.1. Eugster's brief merely presents his version of the facts without demonstrating any error in the findings. As discussed above, Eugster's claim that he filed the guardianship solely for Marion's benefit was soundly rejected by the Board and the Hearing Officer.

The Hearing Officer and Board correctly determined that disbarment is the presumptive sanction for Count 1 under ABA Standards § 7.1. FOF at 23. It provides:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Eugster did not challenge the application of this presumptive sanction.

2. Count 2: The Hearing Officer and Board Properly Found that Eugster Violated RPC 1.6(a) and that Suspension Is the Appropriate Presumptive Sanction for that Violation

The Hearing Officer and Board correctly determined that Eugster violated RPC 1.6(a) by knowingly and intentionally disclosing Marion's confidences and secrets to Roger and other third parties. FOF at 23-24.

Page 28 of Eugster's brief claims that the record fails to identify the secrets and confidences Eugster disclosed. He is incorrect. On September 9, 2004, Eugster called Roger and asked him to join him in a guardianship action against Marion. TR 273. He told Roger about the substance of Marion's contacts with him. TR 273-74. In addition, on September 20, 2004, Eugster sent Roger a proposed petition for guardianship stating that Marion was incompetent and had become "somewhat delusional and that she believed that [Roger] is somehow out to take advantage of her when this is not the case and that she has been advised of this by [Eugster]." EX A-44 at 2 (emphasis added); FOF 2.27 at 12. FOF 2.27 sets forth confidences and secrets disclosed by Eugster in the guardianship petition.

The Hearing Officer and Board correctly determined that

suspension is the presumptive sanction for Count 2 under ABA Standards

§ 4.22. It provides:

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

Eugster has not challenged the application of ABA

Standards § 4.22.

3. Count 3: The Hearing Officer and Board Properly Found that Eugster Violated RPC 1.9(b) and RPC 1.8(b); Disbarment Is the Applicable Presumptive Sanction for that Violation

In Count 3, the Hearing Officer and Board correctly determined that Eugster intentionally violated RPC 1.9(b) and RPC 1.8(b) by knowingly using Marion's confidences and secrets to her disadvantage in connection with the guardianship action. Amended FOF 3.3 at 13.

Neither the Board nor the Hearing Officer determined the applicable ABA Standards section for Count 3. Disbarment is the appropriate sanction for Eugster's violation of RPC 1.9(b) and RPC 1.8(b) in Count 3 under ABA Standards § 4.21, which provides as follows:

4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

Application of ABA Standards § 4.21 is supported by the findings of fact. Eugster intentionally revealed information relating to his representation of Marion to Roger when he disclosed confidences and secrets to support the guardianship petition. Amended FOF 3.3. Eugster's disclosures of Marion's confidences in support of the guardianship petition were intended to benefit himself. FOF 2.42; FOF at 22, 26, 28-29; Amended FOF 3.3. Eugster failed to demonstrate that he was lawfully permitted to disclose the information. FOF 2.28 at 12. The disclosure of confidential information, which was used in the petition as a basis to commence the guardianship, caused injury to Marion, including humiliation, the loss of her relationship with Roger, and \$13,500 in fees and costs. Amended FOF 3.3; FOF 2.26; FOF 2.32 at 9; FOF 2.44. Therefore, disbarment is the presumptive sanction for Count 3.

4. Count 4: The Hearing Officer and Board Properly Found that Eugster Violated RPC 1.9(a); Disbarment Is the Appropriate Presumptive Sanction for that Violation

Page 32 of Eugster's brief argues that he did not violate RPC 1.9(a) because (1) the Board incorrectly presumed that Eugster's interests were not aligned with Marion's interests, and (2) Eugster was not representing anyone in the guardianship action.

RPC 1.9(a) provides as follows:

A lawyer who has formerly represented a client in a matter shall not

thereafter: (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts.

In the context of RPC 1.9(a), "another person" refers to representing a person other than the former client. Eugster effectively represented another person when he represented himself pro se in the guardianship against Marion. See In re Disciplinary Proceeding Against Haley, 156 Wn.2d 324, 338, 126 P.3d 1262 (2006) (lawyer acting pro se is representing a client for purposes of RPC 4.2(a)). Eugster considered himself as both the petitioner and the attorney for petitioner in the guardianship proceedings. EX A-46 at 6. He identified himself as the attorney for the petitioner in the pleadings and during the October 19, 2004 hearing, and he sought attorney fees for time spent in connection with the guardianship. EX A-47 at 5-6; EX A-48 at 7; EX A-49; EX A-64 at 3; see EX A-79.

Eugster's interests were materially adverse to Marion's. It is difficult to conceive of a more materially adverse position than seeking to remove a client's autonomy against her will without making any reasonable inquiry into the client's competence. Eugster's guardianship sought to install Roger as Marion's guardian, which was directly contrary to Marion's objectives. FOF 2.31 at 14. During the guardianship, Eugster

opposed Marion's request to list her residence (EX A-64 at 2-3), a task that Eugster was previously attempting to pursue before the homeowner's insurance expired (EX A-30 at 2). He also opposed Marion's request to direct Roger to return her personal property. EX A-64 at 3-4.

Eugster's contention that the Board assumed that all guardianships are adversarial is unsubstantiated speculation. Although some guardianship actions are not adversarial, the transcript from the October 19, 2004 hearing and the related pleadings demonstrate that Eugster's guardianship against Marion was clearly adversarial. See EX A-64; EX A-52; EX A-54; EX A-57; EX A-60; Moreover, Eugster has not directly challenged any findings regarding the adversarial nature of the guardianship (FOF 2.31 at 14; FOF 2.34 at 15; FOF 2.37), so they are verities on appeal. Whitney, 155 Wn.2d at 467. The Board properly concluded that Eugster violated RPC 1.9(a) by filing his guardianship action against Marion.

Applying ABA Standards § 4.32,¹⁶ the Hearing Officer and Board determined that suspension is the presumptive sanction for Eugster's violation of RPC 1.9(a) by pursuing a guardianship against Marion.

¹⁶ ABA Standards §4.32 provides that "[S]uspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."

Eugster has not challenged the application of this presumptive sanction. The findings also support a presumptive sanction of disbarment for Count 4 under ABA Standards § 4.31, which provides as follows:

Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or . . .
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another and causes serious or potentially serious injury to a client.

Eugster knew that his interests were materially adverse to Marion's interests when he commenced the guardianship action against her and personally served her. FOF at 25; FOF 2.34 at 15; FOF 2.37 at 16. Eugster knowingly used information relating to his representation of Marion when he disclosed confidences and secrets to Roger in pursuit of the guardianship action and exploited his knowledge of her difficult relationship with Roger. FOF at 26; EX A-42; EX A-44 at 1-2. Eugster intended to benefit himself by attempting to assert control over Marion's assets in his role as successor trustee and attorney-in-fact and by seeking attorney fees. FOF at 26; FOF at 30. Eugster's actions caused serious

personal and financial harm to Marion. FOF 2.26 at 12; FOF 2.32 at 9; FOF 2.44 (see analysis under Count 3). Disbarment is the appropriate presumptive sanction under ABA Standards § 4.31(a) and (c).

5. Count 5: The Hearing Officer and Board Properly Found that Eugster Violated RPC 1.15(d) and that Suspension Is the Presumptive Sanction for that Violation

The Hearing Officer and Board correctly determined that Eugster violated RPC 1.15(d) after he was terminated by knowingly refusing to turn over to Marion the client file and other papers belonging to her. FOF at 25-26. The Hearing Officer and Board properly determined that suspension is the presumptive sanction for Eugster's misconduct under ABA Standards § 4.12.¹⁷ Eugster does not challenge the Hearing Officer and Board's analysis of his violation of RPC 1.15(d) or the presumptive sanction of suspension.

6. Count 8: The Hearing Officer and Board Properly Found that Eugster Violated RPC 3.4(c) and that Disbarment Is the Presumptive Sanction for that Violation

The Hearing Officer and Board correctly determined that Eugster violated RPC 3.4(c) by filing a guardianship against Marion without any reasonable basis, a violation of CR 11. FOF 2.39-2.41. RPC 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the

¹⁷ 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

rules of a tribunal. RPC 3.4(c). RPC 3.4(c) applies to court rules. Annotated Model Rules of Prof'l Conduct, 330-34 (6th ed. 2007). Under CR 11, the signature of a lawyer or party on a pleading constitutes a certificate by the party or attorney "that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law. . . ."

Prior to filing guardianship proceedings, a lawyer is obligated to perform an investigation, including the following:

- An attorney is obligated to pursue the least restrictive alternatives for assistance when a person is experiencing a degree of disability or incapacity. All alternatives to a guardianship [including trusts or powers of attorney]¹⁸ must be explored, based on both statutes and constitutional considerations.
- An attorney who is considering the filing of a guardianship Petition must perform an investigation to determine whether or not a guardianship is necessary. The attorney must gather information regarding the medical condition of the Alleged Incapacitated Person (AIP) and determine if a reasonable basis exists for such a Petition. If there is a lack of adequate information to indicate such a basis, an attorney has a duty to perform further investigation.

26 Cheryl C. Mitchell & Fred H. Mitchell, Washington Practice: Elder Law and Practice § 4.46 at 472-73 (2d ed. 2004). As discussed above, the Hearing Officer and Board found that Eugster performed no reasonable investigation. FOF 2.41. By pursuing a guardianship, he pursued the

¹⁸ RCW 11.88.030(i).

most restrictive alternative when he knew that Marion had less restrictive alternatives, including a trust and a power of attorney.

Eugster does not specifically challenge the findings of fact regarding this count, but rather presents his version of the facts, which was not accepted by the Hearing Officer or Board. The unchallenged findings of fact are verities on appeal. Whitney, 155 Wn.2d at 467.

Page 31 of Eugster's brief claims that RPC 3.4(c) only applies if and when the judge in the underlying proceeding finds that the lawyer violated the court rule. Eugster cites no authority for this proposition. Nor does he provide any reason why such a requirement would make any sense.

The Washington Supreme Court has the exclusive responsibility for the lawyer discipline system in Washington. Rule 2.1 of the Rules for Enforcement of Lawyer Conduct (ELC); Whitney, 155 Wn.2d at 555-56 (rejecting argument that superior court has sole jurisdiction over activities of a guardian ad litem). Persons carrying out the functions set forth in the ELC do so under the authority of the Supreme Court. ELC 2.1. Thus, the Hearing Officer and the Board have authority to determine whether Eugster violated CR 11 in order to determine whether he violated RPC 3.4(c).

The Hearing Officer and Board correctly determined that

disbarment is the presumptive sanction under ABA Standards § 6.21, which provides as follows:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Eugster does not challenge the application of ABA Standards § 6.21 to his misconduct.

7. Count 9: The Hearing Officer and Board Properly Found that Eugster Violated RPC 8.4(d) and that Disbarment Is the Presumptive Sanction for that Violation

The Hearing Officer and Board correctly determined that Eugster violated RPC 8.4(d), which prohibits a lawyer from engaging in conduct prejudicial to the administration of justice, when he commenced the guardianship action against Marion. The Hearing Officer and Board applied ABA Standards § 7.1, which is set forth above on page 36, to Eugster's violation of RPC 8.4(d). Eugster does not challenge the application of RPC 8.4(d) and ABA Standards § 7.1 to his misconduct.

8. The Hearing Officer and Board Properly Found that Disbarment Is the Appropriate Sanction for Eugster's Misconduct under the ABA Standards

The Hearing Officer's decision, as unanimously adopted by the Board, establishes that the Association proved seven counts of misconduct and that disbarment is the presumptive sanction for at least three of the

seven counts. In addition to the three counts, the application of the findings to the ABA Standards demonstrates that disbarment is also the presumptive sanction for Count 3 and Count 4.

This Court has found that where there are multiple ethical violations, the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Here, because the presumptive sanction for five counts is disbarment, the overall sanction is disbarment.

The Hearing Officer’s decision, as adopted by the Board, found that the following five aggravating factors applied to Eugster’s misconduct: (1) selfish motive,¹⁹ (2) multiple offenses, (3) refusal to acknowledge wrongful nature of conduct, (4) vulnerability of victim, and (5) substantial experience in the practice of law. FOF at 19-20. The only applicable mitigating factor is “absence of disciplinary record.” FOF at 20-33. Although page 18 of Eugster’s brief claims that the Hearing

¹⁹ Although the Hearing Officer entered a finding that Eugster had a selfish motive (FOF 3.11 at 19), she apparently inadvertently omitted this aggravating factor in the analysis of the charges. See FOF at 22, 24. The Hearing Officer repeatedly found that Eugster’s misconduct was motivated by financial gain in her analysis of the charges and, therefore, the aggravating factor applies. See FOF at 22, 23, 26-28, 30-32.

Officer and Board failed to give full consideration to mitigating factors, the brief does not discuss any omitted mitigating factors. The five aggravating factors outweigh the one mitigating factor, obviating any argument that a downward departure from the presumptive sanction of disbarment must be warranted.

Eugster's contention that disbarment is not appropriate because this proceeding only involves a single act of alleged misconduct is inaccurate. As discussed above, Eugster engaged in seven RPC violations involving many acts of misconduct. In any event, the presumptive sanction imposed is not mitigated merely because Eugster's misconduct involved one client. See, e.g., In re Disciplinary Proceeding Against Miller, 149 Wn.2d 262, 66 P.3d 1069 (2003) (disbarring a lawyer who borrowed money from client and prepared a will naming himself as beneficiary).

G. UNANIMITY AND PROPORTIONALITY FURTHER WARRANT DISBARMENT

After applying the aggravating and mitigating factors, this Court considers whether the degree of unanimity among the Board and the proportionality of the sanction justify departure from the Board's disbarment recommendation. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 348, 157 P.3d 859 (2007). The Court will

adopt the Board's recommended sanction unless the sanction is not proportionate or the Board was not unanimous in its decision. Burtch, 162 Wn.2d at 899. Here, the Board's recommendation for disbarment is unanimous.

When considering proportionality of the recommended sanction, the Court considers similar cases in which the same sanction was approved or disapproved. Marshall, 160 Wn.2d at 348. The respondent lawyer bears the burden of proving that the recommended sanction is disproportionate to other similar cases. Id. at 349. Eugster's brief cites three cases, none of which is remotely analogous to the present case. None of the cases cited by Eugster involve misconduct for failing to abide by client objectives, betraying a client by using client confidences and secrets against the client, and filing a baseless guardianship action against the client in an effort to take away the client's liberty. Moreover, unlike the present case, suspension was the presumptive sanction in one case, Marshall, 160 Wn.2d at 350, and reprimand was the presumptive sanction in the other case. Poole, 156 Wn.2d at 243.

Page 39 of Eugster's brief cites to the Burtch case for the apparent contention that Burtch's misconduct was more reprehensible than his own. Many a lawyer who has committed serious misconduct can point to a second lawyer who was disbarred for misconduct even more egregious; it

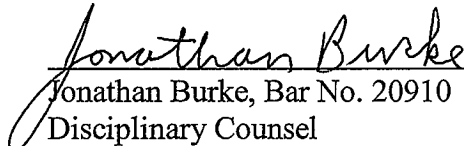
does not follow that the lawyer should not be disbarred. If it were so, then only one lawyer would ever deserve disbarment: the one whose misconduct was the worst. Eugster cannot carry his burden of proof by pointing to disbarred lawyers who did worse things than he has done; rather, he must show that there are cases sufficiently similar to his own in which disbarment was disapproved by this Court. He has failed to do so.

VI. CONCLUSION

“Respondent Eugster filed a court action in direct opposition to his client’s wishes, using information she gave him in confidence to do so, with no independent investigation whatsoever.” FOF at 32. His actions “diminished trust in the profession.” FOF at 27. The Hearing Officer observed that “[t]his blow to the confidence in the legal system can only be repaired slowly, and must begin with removing Mr. Eugster as a threat to the public.” FOF at 32. This Court should affirm the Board’s unanimous recommendation to disbar Eugster and order Eugster to pay \$13,500 in restitution to Marion’s estate.

RESPECTFULLY SUBMITTED this 2nd day of May, 2008.

WASHINGTON STATE BAR ASSOCIATION


Jonathan Burke, Bar No. 20910
Disciplinary Counsel

APPENDIX 1

FILED
JAN 25 2008
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

STEPHEN K. EUGSTER,
Lawyer (Bar No. 2003).

Proceeding No. 06#00029

DISCIPLINARY BOARD ORDER
ADOPTING HEARING OFFICER'S
DECISION WITH AMENDMENTS

This matter came before the Disciplinary Board at its September 21, 2007 meeting on automatic review of Hearing Officer Jane Bremner Risley's decision recommending disbarment following a hearing.

Having reviewed the documents designated by the parties and heard oral argument:

IT IS HEREBY ORDERED THAT the Amended Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation are approved with the attached modifications.

The Board adopts the Hearing Officer's disbarment recommendation.

The vote on this matter was 9-0.


ORIGINAL

157

Those voting were: Andrews, Carlson, Darst, Dickinson-Mina, Hollingsworth,
Lee, Madden, Mosner and Romas.

Kuznetz and Fine recused and were not present for argument or deliberations.

Dated this 25th day of January 2008.


William Carlson, Vice Chair
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the order adopting 10's Decision
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Shawn Newman, Respondent/Respondent's Counsel
at 2507 Crestline Dr. NW, by Certified/first class mail,
postage prepaid on the 25 day of January, 2008
9 8 502


Clerk/Counsel to the Disciplinary Board

1 Many of these modifications are made to clarify the findings, rather than make actual
2 substantive changes. The Disciplinary Board does not usually modify findings under
3 these circumstances. In this case, the Board determined that the Findings as a whole
4 were so confusing that the modifications were necessary to prevent confusion.

5 FINDINGS OF FACT

6 2.13 In 1997, Ms. Stead and John Stead (the Steads) retained Respondent,
7 Steve Eugster, to prepare estate planning documents. (Respondent's Exhibits 7-11).
8 In 2003, the Steads had been advised by an accountant to review their estate
9 planning. Subsequently, Roger took the Steads to Spokane and Respondent prepared
10 new documents, including supplemental needs trusts, were executed. Roger did much
11 of the talking because John couldn't explain things that well, and his mother
12 participated very little. In those wills, (Hellenthal Wills Respondent's Ex 12 & 13,
13 Associations 2.1 & 3) Roger would inherit John and Ms. Stead's home, and his
14 daughter, Emilie, would be the beneficiary of the residual trust. Those wills were
15 signed in October of 2003.¹

16 2.14 Ms. Stead contacted Summer Stahl, an attorney in Colville, Washington,
17 who early in her career took estate planning training, and has since taken
18 Washington's guardian ad litem training, several times about her dissatisfaction with
19 the Hellenthal wills. Ms. Stahl changed the beneficiary on a life insurance policy from
20 Roger as trustee back to Ms. Stead.

21 ¹ Original Finding 2.13 stated "In 1997 Ms. Stead and John Stead had the respondent,
22 Steve Eugster prepare estate planning documents. (Respondent's Exhibits 7-11). Roger testified
23 that in 2003, his mother Ms. Stead and her husband John, had been advised by an accountant to
24 review their estate planning. Subsequently, Roger testified he took them to Spokane and new
documents, including supplemental needs trusts, were executed. Roger testified he did much of
the talking because John couldn't explain things that well, and his mother participated very
little. In those wills, (Hellenthal Wills Respondent's Ex 12 & 13, Associations 2.1 & 3) Roger
would inherit John and Ms. Stead's home, and his daughter, Emilie, would be the beneficiary of
the residual trust. Those wills were signed in October of 2003."

1 2.14.1 Roger came into the home one day for a regular visit and Ms. Stahl was
2 there. Roger "was very upset by this. This is a betrayal of confidence in the family."
3 Roger told Ms. Stahl that he did not believe his mother was competent. Ms. Stahl
4 began paying special attention to Ms. Stead's actions. Ms. Stahl saw no problems with
5 Ms. Stead's competence. Ms. Stahl also testified her father had dementia and her
6 mother-in-law was currently "in a unit" so she was aware there could be good days
7 and bad days. Ms. Stahl testified that she withdrew from the matter because she
8 believed Roger thought his mother was not capable of dealing with things, but Ms.
9 Stead disagreed. Ms. Stahl was concerned for the family relationship. Ms. Stahl's
10 testimony that Ms. Stead said she didn't want the trust was re-iterated by Mr. Eugster,
11 and several persons interviewed by the Guardian ad Litem, (Associations exhibit 67).

12 2.14.1 This encounter, in January 2004, prompted Roger to have Ms. Stead
13 examined for testamentary capacity by Dr. Green, a psychologist in Spokane. Dr.
14 Green noted "an interpersonal issue between Ms. Stead and her son." "The poor
15 woman was desperate, as she had no access to funds. The poor woman had her
16 husband dying and was very upset." Roger told Dr. Green that "she had accused me
17 of malfeasance and hired an attorney. I won't do anything without having her
18 evaluated." Association's Exhibit 67, page 17. Mr. Stead died in February 2004.²

19 ² Original Findings 2.14 stated: "Summer Stahl, an attorney in Colville, Washington, who
20 early in her career took estate planning training, and has since taken Washington's guardian
21 ad litem training testified that Ms. Stead spoke to her several times about her dissatisfaction
22 with the Hellenthal wills. Ms. Stead and John asked, and Ms. Stahl accomplished, a change
23 of beneficiary on a life insurance policy from Roger as trustee back to Ms. Stead. Roger
24 testified he came into the home one day for a regular visit and Ms. Stahl was there. He said "I
was very upset by this. This is a betrayal of confidence in the family." This encounter
prompted Roger to have Ms. Stead examined by Dr. Green, a psychologist in Spokane for
testamentary capacity. The guardian ad litem reported his conversation with Dr. Green noting
that "there was clearly an interpersonal issue between Ms. Stead and her son." "The poor
woman was desperate, as she had no access to funds. The poor woman had her husband
dying and was very upset." Roger told Dr. Green that "she had accused me of malfeasance
and hired an attorney, I won't do anything without having her evaluated." Association's
Exhibit 67, page 17. This occurred in January of 2004 and Mr. Stead died in February. Ms.
Stahl testified Roger had called her saying he didn't think his mother was competent, so Ms.
Stahl began paying special attention to Ms. Stead's actions. She testified she saw no
problems. Ms. Stahl also testified her father had dementia and her mother-in-law was
(footnote continued on next page)

1
2 2.15 Ms. Stead's neighbor, from 1981 until she left the house in 2004 was
3 Marilyn Haney. Marilyn characterized Ms. Stead as "sharp as a tack", and testified that
4 Ms. Stead often complained about Roger to her and believed Roger was taking her
5 money. Ms. Haney runs a retail store in Colville, and she thought Roger believed
6 people were trying to cheat him. She believes numerous people who move to a small
7 town from a big area had the same attitude. Marilyn continued to visit Ms. Stead up
8 until her death and said Ms. Stead was extremely disappointed in Roger over the
guardianship. Ms. Haney notified Roger within an hour of Ms. Stead's death and
Roger did not attend his mother's funeral.³

9 2.19 When Ms. Stead asked Roger to get her \$100 from her own money, he
10 "asked her why she needed a hundred dollars when everything was already paid for
11 except for a woman who came in every two weeks to wash and cut her hair. I was
12 concerned that she might be hand tipping people inappropriately. That would have
been her way."⁴

13
14 currently "in a unit" so she was aware there could be good days and bad days. Ms. Stahl
15 testified that she withdrew from helping Ms. Stead because she believed Roger thought his
16 mother wasn't capable of dealing with things, but Ms. Stead disagreed and she could see
that was going to turn into a big mess. She testified she was concerned for the family
relationship. Ms. Stahl's testimony that Ms. Stead said she didn't want the trust was re-
iterated by Mr. Eugster, and several persons interviewed by the Guardian ad Litem,
(Associations exhibit 67)."

17 ³ Original Finding 2.15 stated: Ms. Stead's neighbor, from 1981 until she left the house in 2004
18 was Marilyn Haney. Marilyn characterized Ms. Stead as "sharp as a tack", and testified that
19 Ms. Stead often complained about Roger to her and believed Roger was taking her money. Ms.
20 Haney runs a retail store in Colville, and she testified she thought Roger believed people were
21 trying to cheat him. She testified numerous people who moved to a small town from a big area
had the same attitude. Marilyn continued to visit Ms. Stead up until her death and said Ms.
Stead was extremely disappointed in Roger over the guardianship. Ms. Haney testified she
was notified within an hour of Ms. Stead's death and that Roger did not attend his mother's
funeral.

22 ⁴ 2.19 Roger testified that his response to his mother requesting that he get her \$100 from her
23 own money was "I asked her why she needed a hundred dollars when everything was already
24 paid for except for a woman who came in every two weeks to wash and cut her hair. I was
concerned that she might be hand tipping people inappropriately. That would have been her
way."

(footnote continued on next page)

1 2.21 To accomplish the short circuit, Mr. Eugster drafted a new will and a trust
2 to be funded by her property, with Ms. Stead as trustee, Respondent as successor,
3 and Roger as successor to Respondent. A durable power of attorney was also signed,
4 with Respondent Eugster holding the power of attorney and Roger as the successor.
5 Ms. Stead did sign the documents, with Roger as successor. Respondent Eugster
6 testified that Ms. Stead wanted him to be the trustee and hold the power of attorney,
7 with her son Roger as successor in both roles. Ms. Stead did not testify during this
8 proceeding, so why she would agree to have Roger as successor remains a mystery.
9 Later that summer, Ms. Stead left a message that the wills were wrong. Mr. Eugster did
10 get the check book and the bills from Roger. Ms. Stead also wanted some property
11 returned to her, Mr. Eugster never accomplished that, and indeed sent a letter saying,
12 "Roger has them for safekeeping." Respondent never responded to this allegation.

13 The 1997 Eugster will and the 2003 Hellenthal will left Ms. Stead and John's
14 residence in Colville to Roger. The 2004 Eugster will did not leave the house to
15 Roger.⁵

16 2.24 Roger suggested, as personal representative of John Stead's estate, that the
17 house be in Ms. Stead's name. Roger believed his mother would understand tangible
18 property easier than investments. Roger was opposed to selling the house because he
19 thought Ms. Stead should still be able to return to it and because of the amount of
20 personal property still there that had to be gone through. Roger left Mr. Eugster a

21 ⁵ Original Finding 2.21: To accomplish the short circuit Mr. Eugster drafted a new will and
22 a trust to be funded by her property, with Ms. Stead as trustee, Respondent as successor, and Roger
23 as successor to Respondent. A durable power of attorney was also signed, with Respondent Eugster
24 holding the power of attorney and Roger as the successor. Ms. Stead did sign the documents, with
Roger as successor. Respondent Eugster testified that Ms. Stead wanted him to be the trustee and
hold the power of attorney, with her son Roger as successor in both roles. Ms. Stead did not testify
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Respondent never responded to this allegation. The 1997 Eugster will and the 2003 Hallenthal will
left Ms. Stead and John's residence in Colville to Roger. The 2004 Eugster will did not leave the
house to Roger.

1 message asking why the house was not being left to him in the July will, as it had been
2 in the two prior wills.⁶

3 2.29 On August 13, 2004 Mr. Eugster sent a letter to Ms. Stead extolling Roger's
4 virtues. That letter became the substance of a conversation between Ms. Stead and
5 Andrew Braff in early September. Ms. Stead asked Mr. Braff if Mr. Eugster represented
6 her or Roger. Ms. Stead reported the same thing to the guardian ad litem. A September
7 1, 2004 letter from Mr. Eugster to Ms. Stead reported paying bills, including one to
8 Roger for purchases made for Ms. Stead on June 22, 2004. The letter also suggested
9 they have a meeting and that Roger should join them.⁷

10 2.32 On September 27, 2004, Respondent Eugster filed a guardianship action
11 regarding Ms. Stead. Mr. Eugster said he was Ms. Stead's attorney, and used his bar
12 number when he signed the petition. Roger signed on the line labeled
13 Petitioner/Attorney. Both men testified that Respondent Eugster asked Roger to join
14 him in the petition and that Roger supplied some of the necessary information for the
15 petition. Roger subsequently hired another attorney to represent him in the
16 guardianship. It could not be determined who decided to name Roger as Ms. Stead's
17 proposed guardian. Respondent concurred in the proposed guardian by signing the
18 petition. Respondent's withdrawal of the guardianship petition was filed by the clerk on
19 November 15, 2004, and a stipulated order of dismissal filed on February 1, 2005. The

20 ⁶Original Finding 2.24: Roger testified it was his suggestion as personal representative of John
21 Stead's estate that the house be put in Ms. Stead's name because she would better
22 understand the tangible property over the investments and that he was opposed to selling the
23 house because he thought she should still be able to return to it and because of the amount of
24 personal property still there that had to be gone through. Roger had left a message at the
Eugster law office asking why the house was not being left to him in the July will, as it had been
in the two prior wills.

⁷ Original Finding 2.29: On August 13, 2004 Mr. Eugster sent a letter to Ms. Stead extolling Roger's virtues. That
letter became the substance of a conversation between Ms. Stead and Andrew Braff in early September. Mr. Braff
testified Ms. Stead wanted to know who Mr. Eugster was representing her or Roger. Ms. Stead reported the same
thing to the guardian ad litem. A September 1, 2004 letter from Mr. Eugster to Ms. Stead reported paying bills,
including one to Roger for purchases made for Ms. Stead on June 22, 2004. The letter also
suggested they have a meeting and that Roger should join them.

1 cost of litigating the guardianship was \$13,500. In the year since her husband died, Ms.
2 Stead lost her relationship with her son and was forced to defend herself against a
3 guardianship action commenced by Mr. Eugster⁸

4 2.21 The Respondent violated former RPC 1.2(a), Scope of Representation. A
5 lawyer shall abide by a client's decisions concerning the objectives of representation, ...
6 and shall consult with the client as to the means by which they are pursued. Ms. Stead
7 wanted Roger to have no control over her affairs, and did not want him to inherit her
8 estate. This was initially accomplished by a will, a power of attorney, and a trust signed
9 by Ms. Stead in July of 2004. Curiously, Roger is still a successor trustee and power of
10 attorney, but Ms. Stead did sign the wills. Roger's declaration quoting Ms. Stead's
11 statement that she wanted to "clean up this mess and get my son back" and
12 Respondent's testimony that he somehow felt Ms. Stead wanted him to repair her
13 relationship with Roger (see 2.34 below) support the odd result of the documents
14 drafted by Respondent in June and July of 2004. Roger was no longer in direct control
15 of Ms. Stead's finances.⁹

14 ⁸Original Finding 2.32: On September 27, 2004 Respondent Eugster filed a guardianship action
15 regarding Ms. Stead. Mr. Eugster said he was Ms. Stead's attorney, and used his bar number
16 when he signed the petition, Roger signed on the line labeled Petitioner/Attorney. Both men
17 testified that Respondent Eugster asked Roger to join him in the petition and that Roger
18 supplied some of the necessary information for the petition. Roger subsequently hired another
19 attorney to represent him in the guardianship. Who made the decision to ask that Roger be
20 made Ms. Stead's guardian is not known, but Respondent Eugster concurred in the petition
21 requesting Roger be the guardian when he signed it. Mr. Treft, Mrs. Stead's trustee after
22 Eugster, testified the cost of litigating the guardianship was \$13,500. Respondent Eugster's
23 withdrawal of the guardianship petition was filed by the clerk on November 15, 2004, and a
24 stipulated order of dismissal filed on February 1, 2005. In the year since her husband died, Ms.
Stead lost her relationship with her son and was forced to defend herself against a
guardianship action commenced by Mr. Eugster.

⁹ Original 2.21 The respondent violated former RPC 1.2(a), Scope of Representation. A lawyer
shall abide by a client's decisions concerning the objectives of representation, ... and shall
consult with the client as to the means by which they are pursued. Ms. Stead wanted Roger to
have no control over her affairs, and did not want him to inherit her estate. This was initially
accomplished by a will, a power of attorney, and a trust signed by Ms. Stead in July of 2004.
Curiously, Roger is still a successor trustee and power of attorney, but Ms. Stead did sign the
wills. Roger's declaration saying "clean up this mess and get my son back" and Respondent's
testimony that he somehow felt

(footnote continued on next page)

1
2 2.22 Respondent Eugster filed a guardianship action that would have put Roger
3 in charge of Ms. Stead's person and made Mr. Eugster the trustee of the trust he had
4 set up for her. He argued to the court on October 19, 2004 during the guardianship
5 action that Ms. Stead was competent when she signed the estate planning documents
6 in July of 2004, and that she had since lost capacity and insisted he was still her lawyer
7 under the power of attorney. Conversely, in his Proposed Finding of Fact, submitted to
8 this Hearing Officer on April 4, 2007, Respondent claimed that he now realized Marion
9 Stead was incompetent when she executed the Will, the Trust, and the POA, on July 9,
10 2004.[Proposed Finding 198] In this guardianship action, he sought to have Roger
11 appointed as Ms. Stead's guardian, in direct contravention to his client's objectives. If
12 Ms. Stead was incompetent in July 2004, then Respondent's appointment as
13 successor trustee and the power of attorney were of not valid and his arguments
14 regarding revocation of the Power of Attorney were meaningless. If Ms. Stead was
15 incompetent on July 9, 2004, there was no valid power of attorney, contrary to
16 Respondent's claims in the guardianship pleadings.¹⁰

17
18 Ms. Stead wanted him to get she and Roger back together (see 2.34 below) support the odd
19 result of the documents drafted by Respondent in June and July of 2004. Roger was no longer
20 in direct control of Ms. Stead's finances.

21
22 ¹⁰ Original 2.22 Respondent Eugster filed a guardianship action that would have put Roger in
23 charge of Ms. Stead's person and made Mr. Eugster the trustee of the trust he had set up for
24 her. He argued to the court on October 19, 2004 during the guardianship action that Ms. Stead
was competent when she signed the estate planning documents in July of 2004, that she had
since lost capacity and and insisted he was still her lawyer under the power of attorney. In his
proposed finding of fact he proposed finding # 197 "On September 16, 2004, Respondent
started preparing guardianship pleadings to commence a guardianship for the benefit of Marion
Stead" #198 "He (Respondent) told Roger that he now realized Marion Stead was incompetent
when she executed the Will, the Trust, and the POA, on July 9, 2004." In this action, he sought
to have Roger installed as Ms. Stead's guardian, in direct contravention to the objectives of the
representation she had set forth for Respondent Eugster in June of 2004. Had he believed the
proposed findings at the time he proposed the guardianship, his defense that he was her
attorney falls under it's own weight. If Ms. Stead was incompetent, then his appointment as
successor trustee and the power of attorney were of little if any consequence, and his
arguments regarding if or when the Power of Attorney was revoked meaningless. If Ms. Stead
was incompetent on July 9, 2004, there was no valid power of attorney, contrary to the
guardianship pleadings.

(footnote continued on next page)

1 2.24 Ms. Stead did not want Roger to have anything to do with her property or
2 her finances. Respondent continued to champion Roger to Ms. Stead, telling her that
3 Roger was a good son and was taking care of her. Respondent told Paul Buxton that
4 Roger was more than capable of handling Ms. Stead's affairs. Respondent also
5 argued against appointing Stephen Trefts as trustee for Ms. Stead. Respondent felt like
6 a member of the family in this case, like a son. Respondent testified "...my impression
7 was that she somehow wanted me to bring her and Roger back together." TR 764.¹¹

8 2.26 The client's objectives were to get Roger out of her financial affairs while
9 improving their personal relationship. Nothing could have been more damaging to Ms.
10 Stead than this guardianship action. Respondent initially wanted control of Ms. Stead's
11 finances. If she was competent, she remained trustee, with power of attorney going to
12 Respondent, who argued she had no ability to change the trust to name a new trustee.
13 If Ms. Stead was found incompetent after signing the July 2004 Eugster estate planning
14 documents, Respondent was the trustee and held durable power of attorney for Mr.
15 Stead. Additionally, Roger would have been appointed guardian of her person.

16 2.26.1 Respondent argued the trust was not before the guardianship court. He
17 wanted control of the client's money. Respondent eventually declined to serve as
18 trustee and attorney in fact. The guardianship action destroyed what was left of Ms.
19 Stead's relationship with her son, Roger. They last spoke after a guardianship
20 hearing.¹²

21 ¹¹ Original 2.24 "Ms. Stead did not want Roger to have anything to do with her property or her
22 finances, Respondent continued to champion Roger to Ms. Stead, telling her Roger was a
23 good son, was taking care of her, and Respondent testified he told Paul Buxton that Roger was
24 more than capable of handling Ms. Stead's affairs, and arguing against appointment of
Stephen Trefts of a Spokane firm of trust officers as trustee for Ms. Stead. Respondent Eugster
testified he felt like a member of the family in this case, like a son. Respondent testified "...my
impression was that she somehow wanted me to bring her and Roger back together." TR 764"

¹²Original 2.26 "Even if the client's objectives were to get Roger out of her financial affairs while
improving their personal relationship, nothing could have been more damaging to Ms. Stead
than this action. Respondent Eugster initially wanted control of Ms. Stead's finances if she
were not named incompetent by a physician, she remained trustee, with power of attorney
(footnote continued on next page)

Count II

Respondent violated RPC 1.6(a) Confidentiality. A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation ...¹³

2.33 The Association's complaint alleges Respondent represented himself and/or Roger in the guardianship petition. Mr. Eugster asked Roger to join the petition as co-petitioner. Roger exhibited enough sophistication that he certainly would have known whether or not he was hiring an attorney. Roger helped with the petition by providing information to fill out the petition. Respondent's role in the case was ambiguous. Respondent and Roger both signed about lines designated "petitioner/attorney" [Ex 47]. Further, it was because of Mr. Eugster that Roger was no longer in control of his mother's finances, and no longer bequeathed the Stead family home. There is insufficient evidence to find Mr. Eugster represented Roger in the guardianship action.¹⁴

going to Respondent, who argued Ms. Stead had no ability to change the trust to name a new trustee. If Ms. Stead was named incompetent by a physician subsequent to the signature the Eugster estate planning documents, Respondent Eugster was the trustee and held durable power of attorney for Mr. Stead. Further, with Respondent Eugster in charge of the trust, Ms. Stead stood to lose control of her person to Roger and the guardianship. Respondent argued the trust was not before the guardianship court. He wanted control of the money. Respondent Eugster eventually declined to serve as trustee and attorney in fact, but had his arguments in the guardianship prevailed, and Ms. Stead found incompetent, and with Respondent's withdrawal, Roger would be in full control of Ms. Stead. The guardianship action destroyed what was left of their relationship. Roger testified they last spoke after a guardianship hearing. "It was obvious I could not approach her. She was she was absolutely wild with accusations, irrational she could have accused me of absolutely anything."

¹³ Original: "Count II

Respondent violated RPC 1.6(a) Confidentiality A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in our to carry out the representation ... ,"

¹⁴ Original 2.33 "The association's complaint alleges Respondent represented himself and/or Roger, the

(footnote continued on next page)

1
2 2.35 Respondent used the knowledge he gained in the estate planning
3 representation to file an unnecessary guardianship petition against Ms. Stead, which
4 destroyed her relationship with her son.¹⁵

5 2.36 Finding 2.36 is stricken.¹⁶

6 3.1 **Count 1** - The Association proved by a clear preponderance of the evidence
7 that Respondent Eugster failed to abide by the client's objectives of representation,
8 which were to remove her son Roger from control of her affairs, re-take control of her

9 client, Mrs. Stead's son. Mr. Eugster and Roger both testified that Mr. Eugster asked Roger to
10 join the petition as co-petitioner. Roger's exhibited enough sophistication that he certainly
11 would have known whether or not he was hiring an attorney. Roger testified he helped with the
12 petition by providing information to fill out the petition, and thanks to the forms ambiguous use
13 of the backslash on the signature line of the petition, Respondent filed ambiguously, his role
being set forth in the body of the pleading. Further, it was because of Mr. Eugster that Roger
was no longer in control of his mother's finances, and no longer bequeathed the Stead family
home. There is insufficient evidence to find Mr. Eugster represented Roger in the guardianship
action."

14 ¹⁵ Original 2.35 "Respondent used the knowledge he gained in the estate planning
15 representation to destroy Ms. Stead's relationship with her son. Even after Mr. Eugster
16 withdrew, the damage continued, and Roger's daughter, Emilie added a sworn statement
17 saying her grandmother was incompetent. Respondent destroyed what was left of his client's
18 family ties. On October 19, 2004 Respondent represented to the court that Ms. Stead was
19 competent on July 6, 2004. (Association's EX 64 page 7) This position put him in direct
opposition to Roger, contrary to the Association's theory that Roger would have benefitted from
the guardianship. If Respondent Eugster's argument that Ms. Stead was competent on July 6,
2004 prevailed, he retained power of attorney." Mr. Eugster argued to the Court that Ms. Stead
was competent in July 2004, but lost her competence after that time. Respondent took this
position in the guardianship action. The guardianship petition nominated Roger as the
guardian. Respondent's argument was not against Roger's interest."

20 ¹⁶ Original 2.36 "Roger would not have been able to inherit the house and he would not have
21 been in control of the trust assets, Respondent Eugster would have been." The Board
22 assumes the Hearing Officer's finding relates to the hypothetical situation that could have
23 occurred if the Court approved the guardianship petition and named Roger guardian of Ms.
24 Stead's person and Respondent's guardian of her estate. Additionally, this finding assumes that
the Court found that Ms. Stead was competent in July 2004, but incompetent prior to August
2004." This is speculation.

1 financial affairs and re-claim property she believed Roger had kept in violation of her
2 wishes. Respondent violated RPC 1.2(a).¹⁷

3 3.3 Count 3 - The Association proved by a clear preponderance that
4 Respondent Eugster used secrets and confidences to Ms. Stead's disadvantage. He
5 humiliated her in the common room at her home when he had her served by a
6 uniformed officer with the Guardianship papers. He knew about her troubles with Roger
7 and knew or should have known that proposing him as guardian would permanently
8 rupture Ms. Stead's relationship with her only son, less than a year after the loss of her
9 husband. He knew the cost of litigation, Ms. Stead spent \$13,500 defending this action.
10 Respondent violated RPC 1.8(b). Respondent used confidences and/or secrets he
11 obtained in his representation of Ms. Stead to her disadvantage. Respondent violated
12 RPC 1.9(b). The Respondent's mental state was intentional. ¹⁸

13
14
15
16
17 ¹⁷ Original 3.1 "**Count 1** - The Association proved beyond a doubt that Respondent Eugster
18 failed to abide by the client's objectives of representation, which were to remove her son Roger
19 from control of her affairs, re-take control of her financial affairs and re-claim property she
believed Roger had kept in violation of her wishes, Respondent violated RPC 1.2(a)."

20 ¹⁸ Original paragraph 3.3 stated: "Count 3 - The Association proved by a clear preponderance
21 that Respondent Eugster used secrets and confidences to Ms. Stead's disadvantage. He
22 humiliated her in the common room at her home when he had her served by a uniformed
23 officer with the Guardianship papers. He knew about her troubles with Roger and knew or
24 should have known that proposing him as guardian would permanently rupture Ms. Stead's
relationship with her only son, less than a year after the loss of her husband. He knew the cost
of litigation, Ms. Stead spent \$13,500 defending this action. Respondent violated RPC 1.8(b).
used confidences and/or secrets relating to Respondent's representation of former client Ms.
Stead to her disadvantage, Respondent violated RPC 1.9(b) see count 2 above."

APPENDIX 2

MAY 24 2007

DISCIPLINARY BOARD

BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

In Re:
Stephen Eugster

Lawyer
Bar # 2003

Public No. 06 0002 9

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND HEARING OFFICER'S RECOMMENDATION

Pursuant to Rule 10.3 of Rules of Enforcement of Lawyer Conduct (ELC) a hearing was held before the undersigned Hearing Officer on March 5, 6, 2007 in Colville, Washington. The matter continued March 7, 8 and 9, 2007 at the Division III Court of Appeals in Spokane, Washington. Disciplinary Counsel Jonathan Burke appeared for the Washington State Bar Association, Stephen Eugster appeared and represented himself.

1. FORMAL COMPLAINT

The Formal Complaint filed by Disciplinary Counsel charged Respondent with the following counts of misconduct:

Count 1 - By failing to abide by Ms. Stead's decisions concerning the objectives of representation, and acting contrary to Ms. Stead's objectives, Respondent violated RPC 1.2(a).

Count 2 - By disclosing confidences and/or secrets relating to the representation of Ms. Stead, and by disclosing to Mr. Samuels and other third parties confidential communications between himself and Ms. Stead, Respondent violated RPC 1.6(a).

Count 3 - By using confidences and/or secrets relating to Respondent's representation of former

FINDINGS OF FACT, CONCLUSIONS OF LAW
HEARING OFFICER'S RECOMMENDATION

client, Ms. Stead to her disadvantage, Respondent violated RPC 1.9(b). In the event and to the extent that Ms. Stead was a current client when Respondent disclosed information relating to his representation of Ms. Stead to her disadvantage, Respondent violated RPC 1.8(b).

Count 4 - By representing himself and/or Mr. Samuels in the guardianship action against Ms. Stead, Respondent violated RPC 1.9(a).

Count 5 - By failing to take steps to the extent reasonably practicable to protect Ms. Stead's property after being terminated, including surrendering papers and property to which the client is entitled, and by refusing to turn over Ms. Stead's client file to Mr. Braff until after the guardianship was dismissed, Respondent violated RPC 1.15(d).

Count 6 - The Association agreed to dismiss Count 6 prior to the hearing.

Count 7 - The Association agreed to dismiss Count 7 prior to the hearing.

Count 8 - By filing the petition for guardianship without making a reasonable inquiry about Ms. Stead's mental condition, Respondent violated Civil Rule 11 and/or an obligation under the rules of a tribunal, and therefore, violated RPC 3.4©).

Count 9 - By pursuing a guardianship against Mrs. Stead, (Respondent's former client) Respondent violated RPC 8.4(d).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following:

2. FINDINGS OF FACT

2.1 OVERVIEW

2.11 Ms. Stead was born in August of 1916. She married twice. Her first marriage to Mr. Sammons, produced a son Roger¹, born in 1943, and ended in divorce. Ms. Stead married John Stead in about 1950 when Roger was seven. Roger testified that John Stead called Roger his son,

¹ Mrs. Stead's son Roger changed his surname, for purposes of clarity he will be referred to as Roger throughout this opinion.

Roger called him Pop, and that John had always treated him like a son. Mrs. Stead told most of the witnesses that her son, Roger, had attended Columbia, an Ivy League school. Roger testified that he went to work in the doctor's office where his mother was an office manager for four surgeons after graduation from college. He later attended graduate school with the help of his father's family.

2.12 Roger worked in hospitals until an inheritance from his father's family made working for a living unnecessary. After the inheritance, Roger, his wife and daughter moved to Stevens County, Washington. Ms. Stead and her husband, John followed her only son and grandchild from Philadelphia to Stevens county, Washington, where they built a home. Roger's uncontroverted testimony was that he moved his mother-in-law and her sister to Stevens county as well. Roger's marriage ended, and Stephen Eugster, Respondent in this action, represented Roger in the divorce. Roger's ex-wife and daughter moved to Spokane. Roger had custodial time and his daughter Emilie, spent week-ends with her father. Roger testified he facilitated visits between his daughter, Mr. and Mrs. Stead and his ex-wife's family in Stevens county.

2.13 In 1997 Ms. Stead and John Stead had the respondent, Steve Eugster prepare estate planning documents. (Respondent's Exhibits 7-11). Roger testified that in 2003, his mother Ms. Stead and her husband John, had been advised by an accountant to review their estate planning. Subsequently, Roger testified he took them to Spokane and new documents, including supplemental needs trusts, were executed. Roger testified he did much of the talking because John couldn't explain things that well, and his mother participated very little. In those wills, (Hellenthal Wills Respondent's Ex 12 & 13, Associations 2.1 & 3) Roger would inherit John and Ms. Stead's home, and his daughter, Emilie, would be the beneficiary of the residual trust. Those wills were signed in October of 2003.

2.14 Summer Stahl, an attorney in Colville, Washington, who early in her career took estate planning training, and has since taken Washington's guardian ad litem training testified that Ms. Stead spoke to her several times about her dissatisfaction with the Hellenthal wills. Ms. Stead and John asked, and Ms. Stahl accomplished, a change of beneficiary on a life insurance policy from Roger as trustee back to Ms. Stead. Roger testified he came into the home one day for a regular

FINDINGS OF FACT, CONCLUSIONS OF LAW
HEARING OFFICER'S RECOMMENDATION

visit and Ms. Stahl was there. He said "I was very upset by this. This is a betrayal of confidence in the family."

This encounter prompted Roger to have Ms. Stead examined by Dr. Green, a psychologist in Spokane for testamentary capacity. The guardian ad litem reported his conversation with Dr. Green noting that "there was clearly an interpersonal issue between Ms. Stead and her son." "The poor woman was desperate, as she had no access to funds. The poor woman had her husband dying and was very upset." Roger told Dr. Green that "she had accused me of malfeasance and hired an attorney, I won't do anything without having her evaluated." Association's Exhibit 67, page 17: This occurred in January of 2004 and Mr. Stead died in February.

Ms. Stahl testified Roger had called her saying he didn't think his mother was competent, so Ms. Stahl began paying special attention to Ms. Stead's actions. She testified she saw no problems. Ms. Stahl also testified her father had dementia and her mother-in-law was currently "in a unit" so she was aware there could be good days and bad days. Ms. Stahl testified that she withdrew from helping Ms. Stead because she believed Roger thought his mother wasn't capable of dealing with things, but Ms. Stead disagreed and she could see that was going to turn into a big mess. She testified she was concerned for the family relationship. Ms. Stahl's testimony that Ms. Stead said she didn't want the trust was re-iterated by Mr. Eugster, and several persons interviewed by the Guardian ad Litem, (Associations exhibit 67).

2.15 Ms. Stead's neighbor, from 1981 until she left the house in 2004 was Marilyn Haney. Marilyn characterized Ms. Stead as "sharp as a tack", and testified that Ms. Stead often complained about Roger to her and believed Roger was taking her money. Ms. Haney runs a retail store in Colville, and she testified she thought Roger believed people were trying to cheat him. She testified numerous people who moved to a small town from a big area had the same attitude. Marilyn continued to visit Ms. Stead up until her death and said Ms. Stead was extremely disappointed in Roger over the guardianship. Ms. Haney testified she was notified within an hour of Ms. Stead's death and that Roger did not attend his mother's funeral.

2.16 Roger testified there was no love in the home he had with his mother and John, and that near the end of his life, John had withdrawn from Ms. Stead because she had become so critical. Roger said his mother had once been capable of handling household bills, but did not believe she could still do it. He had been filling out checks, putting the postage on the envelopes, and had arranged for as many automatic monthly payments as possible.

2.17 In February of 2004 John died. The trust created by the Hellenthal documents was funded, and Roger became trustee of the Supplemental Needs Trust. In March, Ms. Stead moved into Parkview Assisted Living Facility in Colville, WA.

2.18 In June Ms. Stead had been a widow for five months after her 54 year marriage, she had left her home of over 20 years for an assisted living center and she was just two months shy of her eighty-eighth birthday. This was when she contacted Respondent Eugster. His notes on conversations with Ms. Stead begin in June, the first page of notes is not dated. Listed under "prob" which Respondent Eugster testified meant problems, Respondent listed Roger Samuels. This was on June 9, 2004. Respondent Eugster's notes say Roger "Jerry" found will and destroyed, that John had died February 4 and that Ms. Stead's house was idle (empty). The June 9 notes say she and John did not like the trusts. Ms. Stead wanted to pay her own way and did not like the fact that the trusts were set up to maximize Medicare benefits. Under "What does she want", the Respondent's notes say life insurance turned into trust. The name Paul Buxton, the Edward D. Jones account manager for John and Ms. Stead in Colville, WA., appeared many times in the notes. Mr. Eugster testified Ms. Stead was agitated and confused, and she wanted to see him in Colville. She was very upset over Roger and wanted him to no longer be in charge of her affairs.

2.19 Roger testified that his response to his mother requesting that he get her \$100 from her own money was "I asked her why she needed a hundred dollars when everything was already paid for except for a woman who came in every two weeks to wash and cut her hair. I was concerned that she might be hand tipping people inappropriately. That would have been her way."

FINDINGS OF FACT, CONCLUSIONS OF LAW
HEARING OFFICER'S RECOMMENDATION

2.20 On June 30, 2004 Mr. Eugster sent a letter to Ms. Stead purporting to "fully disclose to you what having me serve in the fiduciary capacities above will mean to you, Agent, Trustee, or Personal Representative". The letter states "It is my understanding that you wish to be in control of your estate as long as is possible." It also says you would pay your own bills and that I would work with you, if necessary, in this regard." (Associations EX 12) Mr. Eugster testified his first goal was to short circuit everything that Roger might have been doing. He testified that Ms. Stead's concerns about Roger didn't make sense to him, but he wanted to be sure.

2.21 To accomplish the short circuit Mr. Eugster drafted a new will and a trust to be funded by her property, with Ms. Stead as trustee, Respondent as successor, and Roger as successor to Respondent. A durable power of attorney was also signed, with Respondent Eugster holding the power of attorney and Roger as the successor. Ms. Stead did sign the documents, with Roger as successor. Respondent Eugster testified that Ms. Stead wanted him to be the trustee and hold the power of attorney, with her son Roger as successor in both roles. Ms. Stead did not testify during this proceeding, so why she would agree to have Roger as successor remains a mystery. Later that summer, Ms. Stead left a message that the wills were wrong. Mr. Eugster did get the check book and the bills from Roger. Ms. Stead also wanted some property returned to her, Mr. Eugster never accomplished that, and indeed sent a letter saying, "Roger has them for safekeeping." Respondent never responded to this allegation.

The 1997 Eugster will and the 2003 Hallenthal will left Ms. Stead and John's residence in Colville to Roger. The 2004 Eugster will did not leave the house to Roger.

2.22 Respondent Eugster met with Roger in July to discuss the trust that had been set up by John's will. Respondent also met with Mr. Buxton regarding Ms. Stead's concerns about what assets had been used to fund the trust and her belief that there had been errors. Ms. Stead was right.

The attorney she hired after Mr. Eugster, Mr. Braff, reviewed the trust funding and determined the insurance policy that designated Ms. Stead the beneficiary was improperly in the trust, as were two other assets. Mr. Braff also ascertained that John's estate had not borne any of

the probate costs, they had all be assessed against Ms. Stead's share of the estate. The trust refunded \$129,000 to \$135,000 to Ms. Stead in June of 2005. Who was responsible for these errors was not clear from the evidence presented.

2.23 Roger and Ms. Stead's relationship was complicated and strained. Testifying about going to Spokane to discuss estate planning with Mr. Hellenthal, Roger said "We should make the point my parents and I were very closely involved in each other's lives." In a declaration filed in the guardianship on October 18, 2004, Roger stated "When I saw her [Ms. Stead] the next day she told me she 'wanted to fix this mess and get her son back' so she had called Eugster to come take over my duties as personal representative." (Association's EX 60, 4th unnumbered page). Ms. Stead's neighbor testified that during Roger's visits he was condescending to Ms. Stead, treating her like a six year old. John's death strained the relationship further. Roger had heard that Ms. Stead was telling people he was stealing her property, insisting she move to Parkview and sell the car. He testified he believed Ms. Stead thought he was taking her property because she didn't understand how the trust was funded. Respondent Eugster testified, Mrs. Stead wanted to remove Roger's control of her life, but still complained he didn't visit her. Most witnesses confirmed Ms. Stead's disappointment that Roger no longer visited, and her distrust of Roger. Mr. Braff and Mr. Eugster both testified Ms. Stead wanted Roger to come see her and was disappointed he didn't call or come by.

2.24 Roger testified it was his suggestion as personal representative of John Stead's estate that the house be put in Ms. Stead's name because she would better understand the tangible property over the investments and that he was opposed to selling the house because he thought she should still be able to return to it and because of the amount of personal property still there that had to be gone through. Roger had left a message at the Eugster law office asking why the house was not being left to him in the July will, as it had been in the two prior wills.

2.25 Roger testified his mother told him to give all the financial information, bills and checkbooks to Mr. Eugster. Another source of conflict was Ms. Stead's dog. Roger had taken the animal to Spokane for treatment and was keeping it at his home because it was incontinent while

recovering from the surgery, After Mr. Eugster became Ms. Stead's attorney, Roger asked him for \$102 to pay a vet bill and Mr. Eugster paid that bill in late summer. Roger testified the dog required kenneling when he traveled and he wanted reimbursed for the vet bills and kennel charges. The dog wasn't returned to Ms. Stead until October of 2004, and survived Ms. Stead.

2.26 Ms. Stead contacted Mr. Eugster regularly about her concerns. On July 9 she called saying Roger knew about the will and was upset. She wanted everything cleared up so he couldn't get any more of her assets. Mr. Eugster responded by sending copies of the new Power of Attorney with the Revocation to Edward D. Jones, Bank of America, and recording it in Stevens County. On July 14, she called wanting her dictionary that Roger had, on July 15 a file note says Ms. Stead wants dictionary, cemetery deed and checkbook, left message for Roger. A note that has an illegible date, between July 19 and Aug 2 says is someone taking care of her bills, the will is wrong, and needs changed, she does not want Roger and Emilie to inherit, she will dispose of money herself.

2.27 On Aug 2 the builder of Ms. Stead and John's home called the Eugster law office about pending sale of the house. The builder, Dennis Sweeny told the Guardian ad Litem that Ms. Stead had personally contacted him and wanted him to get in touch with the realtor to explain the special energy saving features of the home.

2.28 August 4 notes indicate Ms. Stead called the Eugster office to say Roger has the silver and the Williamsburg tea pot was gone. Roger testified he wanted a small tea table that had belonged to his uncle. The note regarding Ms. Stead's call said she took care of an uncle, so the Williamsburg tea table was hers. On August 9 there is a memo from Mr. Eugster's staff regarding Ms. Stead's call, characterized as a "bitchfest" (Association's Ex 28) and she was still waiting for the checkbook from Roger. It appears the checkbook was received by Mr. Eugster on July 19, 2007 during the meeting with Roger. No correspondence confirms that in Respondent Eugster's file.

2.29 On August 13, 2004 Mr. Eugster sent a letter to Ms. Stead extolling Roger's virtues. That letter became the substance of a conversation between Ms. Stead and Andrew Braff in early

FINDINGS OF FACT, CONCLUSIONS OF LAW
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September. Mr. Braff testified Ms. Stead wanted to know who Mr. Eugster was representing her or Roger. Ms. Stead reported the same thing to the guardian ad litem. A September 1, 2004 letter from Mr. Eugster to Ms. Stead reported paying bills, including one to Roger for purchases made for Ms. Stead on June 22, 2004. The letter also suggested they have a meeting and that Roger should join them.

2.30 In early September, Mr. Braff became Ms. Stead's attorney and sent a letter to Respondent Eugster to terminate Mr. Eugster's representation of Ms. Stead. Ms. Stead signed a revocation of power of attorney, and Mr. Braff mailed that to Mr. Eugster with a request for Ms. Stead's file. Mr. Eugster responded that he would not recognize the revocation because Ms. Stead was not competent, and the file was not returned until October.

2.31 A request from Mr. Braff to Mr. Eugster for information detailing the significant changes in Ms. Stead since her will had been signed in July was not provided. The witnesses from Parkview verified she was of sound mind. Respondent Eugster witnessed her signature on that day.

2.32 On September 27, 2004 Respondent Eugster filed a guardianship action regarding Ms. Stead. Mr. Eugster said he was Ms. Stead's attorney, and used his bar number when he signed the petition, Roger signed on the line labeled Petitioner/Attorney. Both men testified that Respondent Eugster asked Roger to join him in the petition and that Roger supplied some of the necessary information for the petition. Roger subsequently hired another attorney to represent him in the guardianship.

Who made the decision to ask that Roger be made Ms. Stead's guardian is not known, but Respondent Eugster concurred in the petition requesting Roger be the guardian when he signed it. Mr. Treft, Mrs. Stead's trustee after Eugster, testified the cost of litigating the guardianship was \$13,500. Respondent Eugster's withdrawal of the guardianship petition was filed by the clerk on November 15, 2004, and a stipulated order of dismissal filed on February 1, 2005. In the year since her husband died, Ms. Stead lost her relationship with her son and was forced to defend herself against a guardianship action commenced by Mr. Eugster.

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2. SPECIFIC FINDINGS BY COUNT.

Count 1

2.21 The respondent violated former RPC 1.2(a), Scope of Representation. A lawyer shall abide by a client's decisions concerning the objectives of representation, ... and shall consult with the client as to the means by which they are pursued. Ms. Stead wanted Roger to have no control over her affairs, and did not want him to inherit her estate. This was initially accomplished by a will, a power of attorney, and a trust signed by Ms. Stead in July of 2004. Curiously, Roger is still a successor trustee and power of attorney, but Ms. Stead did sign the wills. Roger's declaration saying "clean up this mess and get my son back" and Respondent's testimony that he somehow felt Ms. Stead wanted him to get she and Roger back together (see 2.34 below) support the odd result of the documents drafted by Respondent in June and July of 2004. Roger was no longer in direct control of Ms. Stead's finances.

2.22 Respondent Eugster filed a guardianship action that would have put Roger in charge of Ms. Stead's person and made Mr. Eugster the trustee of the trust he had set up for her. He argued to the court on October 19, 2004 during the guardianship action that Ms. Stead was competent when she signed the estate planning documents in July of 2004, that she had since lost capacity and insisted he was still her lawyer under the power of attorney. In his proposed finding of fact he proposed finding # 197 "On September 16, 2004, Respondent started preparing guardianship pleadings to commence a guardianship for the benefit of Marion Stead" #198 "He (Respondent) told Roger that he now realized Marion Stead was incompetent when she executed the Will, the Trust, and the POA. on July 9, 2004." In this action, he sought to have Roger installed as Ms. Stead's guardian, in direct contravention to the objectives of the representation she had set forth for Respondent Eugster in June of 2004. Had he believed the proposed findings at the time he proposed the guardianship, his defense that he was her attorney falls under it's own weight. If Ms. Stead was incompetent, then his appointment as successor trustee and the power of attorney were of little if any consequence, and his arguments regarding if or when the Power of Attorney was

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revoked meaningless. If Ms. Stead was incompetent on July 9, 2004, there was no valid power of attorney, contrary to the guardianship pleadings.

2.23 Ms. Stead also wanted her property, the dictionary, the silver, the tea table. Mr. Eugster responded with a letter dated August 13, 2004 "Roger probably has some items in his possession. Roger has these items because he is protecting them." On September 1, 2004 Mr. Eugster wrote to Ms. Stead, "Roger has certain items from the house in his possession, for safekeeping, Especially, he has the silver." Respondent didn't even try to get the client's personal property, but rather, left it with the client's son in direct contravention of the client's objectives when she hired Respondent Eugster to represent her.

2.24 Ms. Stead did not want Roger to have anything to do with her property or her finances, Respondent continued to champion Roger to Ms. Stead, telling her Roger was a good son, was taking care of her, and Respondent testified he told Paul Buxton that Roger was more than capable of handling Ms. Stead's affairs, and arguing against appointment of Stephen Trefts of a Spokane firm of trust officers as trustee for Ms. Stead. Respondent Eugster testified he felt like a member of the family in this case, like a son. Respondent testified "...my impression was that she somehow wanted me to bring her and Roger back together." TR 764

2.25 Despite Ms. Stead's continuing complaints against Roger, and the hiring of a new attorney, Respondent Eugster filed a guardianship nominating Roger as Ms. Stead's guardian. Nothing could have been more contrary to Ms. Stead's wishes. Respondent's petition states Mr. Eugster was previously the attorney for Mrs. Stead and is currently the attorney for Mrs. Stead. Respondent Eugster later claimed he was acting under** RPC 1.16 in defense of this action. That claim is not persuasive.

2.26 Even if the client's objectives were to get Roger out of her financial affairs while improving their personal relationship, nothing could have been more damaging to Ms. Stead than this action. Respondent Eugster initially wanted control of Ms. Stead's finances if she were not named incompetent by a physician, she remained trustee, with power of attorney going to Respondent, who argued Ms. Stead had no ability to change the trust to name a new trustee. If Ms.

Stead was named incompetent by a physician subsequent to the signature the Eugster estate planning documents. Respondent Eugster was the trustee and held durable power of attorney for Mr. Stead. Further, with Respondent Eugster in charge of the trust, Ms. Stead stood to lose control of her person to Roger and the guardianship. Respondent argued the trust was not before the guardianship court. He wanted control of the money. Respondent Eugster eventually declined to serve as trustee and attorney in fact, but had his arguments in the guardianship prevailed, and Ms. Stead found incompetent, and with Respondent's withdrawal, Roger would be in full control of Ms. Stead. The guardianship action destroyed what was left of their relationship. Roger testified they last spoke after a guardianship hearing. "It was obvious I could not approach her. She was — she was absolutely wild with accusations, irrational. ... she could have accused me of absolutely anything."

Count II

Respondent violated RPC 1.6(a) Confidentiality A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in our to carry out the representation ...

2.27 Respondent Eugster told the client's son he believed she was delusional, and when he signed a guardianship petition in which he used her personal information and set forth her financial condition and his impression of her, formed during his estate planning work he disclosed confidences relating to the representation as set forth below. .

Mrs. Stead is not capable of managing her investments or her daily expenses and monthly expenses. Further she is at a loss to understand how these matters are taken care of. In the last few weeks it has become apparent that Mrs. Stead has become somewhat delusional and that she believes her son Roger Samuels is somehow out to take advantage of her when this is certainly not the case.

Guardianship Petition (Associations Ex.67)

2.28 Respondent's defense to this charge is that this was not a confidence since it was apparent to anyone. Respondent Eugster's proposed Finding of Fact #232 (e) To the extent any information was disclosed to Roger Samuels, Respondent had authority under the Power of

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Attorney to disclose necessary information to protect Mrs. Stead." This he asserts meets the standard of former RPC 1.8(b) "unless the client consents in writing after consultation." Proposed Finding of Fact 233 (b) and (d). This is the same Power of Attorney a previously proposed Finding said was signed when Ms. Stead was incompetent.

Andrew Braff, the guardian ad litem, Ms. Stead's neighbor, Mr. Trefts and her trust officer, Ms. Calbreath all testified Ms. Stead was competent. Everyone in the guardian ad litem's report including a practicing psychologist hired by Roger, her physician, Dr. Shannon, and a nurse practitioner-social worker said she was competent.

2.38 Ms. Stead's assessment of the overfunding of the trust was accurate, the guardianship was dismissed, Roger did have some of her property, and he was reluctant to return her dog and asked for money for caring for it. Respondent asserts in his findings that he was trying to protect Ms. Stead. Northwest Trustee and Management Services and the assisted living were in place when Respondent filed the guardianship. Respondent contended he was Ms. Stead's attorney when the guardianship was filed not that he was her attorney in fact. No evidence was presented indicating Mr. Eugster had consulted with Ms. Stead or gained her approval for the disclosures or the filing of the court action. Respondent requested payment of attorney fees for prior work and "An Order approving payment, by Petitioner's, of reasonable attorney fees and costs incurred in preparation and presentation of this Guardianship petition." (Association's EX 47)

Count III

Respondent violated RPC 1.9 (b) Conflict of Interest, Former Client A lawyer who has formerly represented a client in a matter shall not thereafter (b) use confidences or secrets relating to the representation to the disadvantage of the former client, except as rule 1.6 would permit.

2.29 Mr. Eugster represented in the guardianship petition he was still Ms. Stead's lawyer and argued RCW 11.94 required a court order to divest him of the power of attorney, establishing himself beyond a reasonable doubt as her adversary. He argued that while he was still Ms. Stead's lawyer, his client and her new counsel should have sued him to divest him of the power of attorney, in direct contravention to his former client's interests. Respondent's Proposed Conclusion

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of Law 10 "Marion Stead, if she had contested the action of Respondent in not recognizing the Revocation of Durable Power of Attorney, had to bring an action under RCW 11.94.090."

2.30 Because Respondent Eugster represented to the court he was Ms. Stead's attorney, his conduct should have been conformity with RPC 1.8(b) Conflict of Interest; Prohibited Transactions; Current Client A lawyer who is representing a client in a matter shall not use information relating to a representation of a client to the disadvantage of a client unless the client consents in writing after consultation.

2.31 Mr. Eugster represented Ms. Stead in estate planning matters, to eliminate her son Roger from control of her affairs. The guardianship was completely contrary to Ms. Stead's wishes to be free of Roger's control, to be in charge of her own finances. Despite all Ms. Stead's concerns that resulted in the new will, trust, with Ms. Stead as trustee, power of attorney and all the other documents, all to lessen Roger's involvement in her affairs, Respondent nominated Roger as guardian². There was never any suggestion that Ms. Stead was consulted or agreed to the guardianship.

Count IV

Respondent violated RPC 1.9 Conflict of Interest, Former Client A lawyer who has formerly represented a client in a matter shall not thereafter (a) represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts.

2.32 The respondent filed a guardianship action over the person and estate of his client, naming himself previous and current attorney for the client Mrs. Stead and "has witnessed Mrs. Stead's lack of ability and capability in managing her affairs." (Respondent's ex 65)

¹ Respondent repeatedly argued that the Guardianship statutes, set forth at **RCW 11.94 controlled, following it's dictates as set forth at RCW 11.91.010 The court shall make its appointment in accordance with the principles most recent nomination in a durable power of attorney

2.33 The association's complaint alleges Respondent represented himself and/or Roger, the client, Mrs. Stead's son. Mr. Eugster and Roger both testified that Mr. Eugster asked Roger to join the petition as co-petitioner. Roger's exhibited enough sophistication that he certainly would have known whether or not he was hiring an attorney. Roger testified he helped with the petition by providing information to fill out the petition, and thanks to the forms ambiguous use of the backslash on the signature line of the petition, Respondent filed ambiguously, his role being set forth in the body of the pleading. Further, it was because of Mr. Eugster that Roger was no longer in control of his mother's finances, and no longer bequeathed the Stead family home. There is insufficient evidence to find Mr. Eugster represented Roger in the guardianship action.

2.34 Mr. Eugster's interests were opposed to Ms. Stead's. He knew she had an attorney and Northwest Trust and Management Services to take care of her. He knowingly sought to have Ms. Stead's choices removed, installing Roger as the Guardian, and himself as the trustee. Mr. Braff testified that if the guardianship were successful, Respondent Eugster could still be the trustee under the documents prepared by Respondent, and signed by Ms. Stead in July. Respondent's correspondence indicated he would be paid \$125 per hour. Respondent Eugster knew the familial relationship was not good and by putting Roger up as the guardian, Respondent insured the difficult relationship would be permanently ruptured leaving Respondent in charge of Ms. Stead's affairs without familial oversight. Roger testified he last spoke to his mother in October of 2004.

2.35 Respondent used the knowledge he gained in the estate planning representation to destroy Ms. Stead's relationship with her son. Even after Mr. Eugster withdrew, the damage continued, and Roger's daughter, Emilie added a sworn statement saying her grandmother was incompetent. Respondent destroyed what was left of his client's family ties. On October 19, 2004 Respondent represented to the court that Ms. Stead was competent on July 6, 2004. (Association's EX 64 page 7) This position put him in direct opposition to Roger, contrary to the Association's theory that Roger would have benefitted from the guardianship. If Respondent Eugster's argument that Ms. Stead was competent on July 6, 2004 prevailed, he retained power of attorney.

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2.36 Roger would not have been able to inherit the house and he would not have been in control of the trust assets, Respondent Eugster would have been.

2.37 Had Mr. Eugster been successful with the guardianship petition, Ms. Stead would have been completely isolated, the family bonds destroyed, and Mr. Eugster trustee over all of Ms. Stead's assets, with full power of attorney. The Respondent told court that he had reviewed the ethical issues of filing a guardianship that would result in him being named trustee over the dependent person's estate, with her power of attorney and believed himself to be in conformity with ethical standards. Respondent declined the power of attorney two days after the court asked him to brief those issues and after Mr. Braff was appointed counsel for Ms. Stead in the guardianship action. He had nothing left to gain.

Count V.

Respondent Eugster violated RPC 1.15 (d) Declining or Terminating Representation. (d) A lawyer shall take steps to the extent reasonably practicable to protect a client's interests ... surrendering papers and property to which the client is entitled.

2.38 Mr. Braff sent 3 letters to Mr. Eugster before the file was sent to him, and the file was not released until after Respondent Eugster had withdrawn from the guardianship action. His response to this charge was that Ms. Stead did only requested her file as Ms. Stead, not as trustee for Ms. Stead.

Counts VI and VII were dismissed by the Association prior to hearing.

Count VIII

By filing the petition for guardianship, without making a reasonable inquiry about Ms. Stead's mental condition, Respondent violated CR 11, an obligation under the rules of a tribunal, and therefore violated RPC 3.4 ©) A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

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CR 11 says ... The signature of an attorney or party constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) it is well grounded in fact.

2.39 Ms. Stead had had a competency test in December, 2003 at the request of Roger. The witnesses at Parkview who signed the will in July said Ms. Stead was of sound mind. Mr. Braff, Mr. Trefts, Cassandra Calbreath, and Marilyn Harvey all testified to Ms. Stead's competence around the time the guardianship petition was filed. After the guardianship filing, the Guardian and Litem and Ms. Stead's physician, Dr. Shannon provided reports, saying Ms. Stead was competent. As set forth above, Respondent told the Stevens county court Ms. Stead was competent in July to sign the estate documents.

2.40 It should be noted here that Cassuandra Calbreath, trust officer for Ms. Stead from Northwest Trust and Management Services, testified that Ms. Stead was fitted with hearing aids after they became involved with Ms. Stead. Mr. Eguster's secretary, Ms. Lawson said that Ms. Stead kept repeating the same concerns. She said, "It seemed like I would tell her something and it wasn't penetrating." When Roger was asked if Ms. Stead had a hearing problem, he said, "She had a listening problem." Neither Mr. Eguster, who testified he had extensive experience with the elderly, his secretary nor Roger had considered whether or not Ms. Stead might have a hearing loss. Mr. Eguster didn't even investigate her health to see if there was a physical issue causing what he claimed to be incompetence.

2.41 Respondent Eguster should have known that Ms. Stead was suffering from grief and depression from the loss of her husband and the estrangement of her son, and not attributed those emotions to incompetency. At one point in this hearing testimony, Respondent alluded to Ms. Stead's loss of John and moving into the new home in the same sentence as he used the term confused. He failed utterly to consider the effects of grief and depression on Ms. Stead, while testifying that during that summer he was going through a sad time because he was in the midst of a divorce. There were no declarations from Parkview staff who saw her daily regarding a change

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in behaviors since July, there was no medical evidence of incompetency. There were no visible signs alluded to by witnesses who see incompetent people. She was well groomed, clean, appropriately dressed. There was no objective evidence of declining competence. Respondent did not do a reasonable inquiry. He violated CR 11 and therefore violated RPC 3.4©).

Count IX

Respondent Eguster violated RPC 8.4 Misconduct: It is professional misconduct to (d) engage in conduct that is prejudicial to the administration of justice.

2.42 Respondent's act of telling the court he still represented Ms. Stead when he filed the guardianship action against Ms. Stead after she had engaged another attorney, and asking that Roger be put in control of her life when the whole purpose of his representation was to get Roger out of Ms. Stead's affairs is conduct outside the norm that any lawyer should know could be a serious interference with the administration of justice. Respondent Eguster relied solely on his observations and impressions during the representation to bring an action against a client who had terminated his services. The only apparent reason for this filing would be to install Respondent as the trustee and attorney in fact over Ms. Stead's assets.

2.43 Respondent knew Ms. Stead's intentions were to change her will so neither Roger nor Emilie would inherit from her estate from messages she left with his office.

2.44 Stevens county is a rural venue, Ms. Stead lived in a communal home, and Respondent Eguster had an 88 year old widow, served by a uniformed officer in the common area. Mr. Braff testified Ms. Stead was humiliated by the service. Respondent left Ms. Stead and everyone in that common room with the impression that he was actively working against her objectives with her son, Roger, whom Ms. Stead believed was trying to take her assets and her property.

2.45 Respondent knew that pursuing a guardianship action with Roger against Ms. Stead would interfere or obstruct her in pursuing her objectives to change her estate planning through Mr. Braff. Respondent knew pursuing the guardianship with Roger would end the mother son relationship for good. Ms. Stead did not speak to her son again before she died.

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3. FINDINGS REGARDING AGGRAVATING AND MITIGATING FACTORS

Aggravating Factors

3.11 **Selfish Motive.** Had Respondent's guardianship petition been successful in persuading the court that Ms. Stead was competent when she signed the documents he prepared in July of 2004, Respondent Eguster would have been the Trustee, had the Power of Attorney, and control over Ms. Stead's considerable estate. He had a financial interest.

He also sought to substitute his judgment for his client's, this is his proposed finding of fact. Page 23 #130

Stephen Eguster did not believe that Ms. Stead was acting competently or that she was capable of making decisions which were adequate to the fulfillment of her objectives. He concluded that her concerns about Roger Samuels were irrational because they simply were not born out by the facts. He concluded it made no sense for Ms. Stead to have him do the daily work of the management of her assets at her affairs and concluded it made more sense for Roger Samuels to continue to do these things as he had done for many months and indeed many years from [sic] the family. One of her objectives was to clearly preserve her estate and the estate of John Stead so as to ensure that her grandchild Emilie Sammon receive something from the family heritage.

3.12 **Multiple Offenses.** Respondent violated RPC 1.2(a), RPC 1.6(a), RPC 1.9(a), RPC 1.9(b), RPC 3.4 c), and RPC 8.4(d).

3.13 **Refusal to acknowledge wrongful nature of conduct.** Respondent did not acknowledge the wrongful nature of his conduct. He filed duplicative dismissal motions with no basis in the rules, he alleged in closing argument that Ms. Stead never sued him to terminate his power of attorney as a defense, he accused Association Counsel and a witness of trying to disbar him and take away his right to practice law. He filed a federal court action regarding this disciplinary proceeding. As set forth in his own words above, he never acknowledged that Ms. Stead could change her mind about who would benefit from her estate.

3.14 **Vulnerability of victim.** Ms. Stead was an elderly, grieving widow suffering from

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depression and physical health problems who had a difficult relationship with her only son. She had recently lost her husband and left her home of twenty years for a retirement apartment. See Association's EX 62.

3.15 Substantial experience in the practice of law. Respondent was admitted to practice law in 1970. It is an aggravating factor in this case.

Mitigating Factors

3.16 Absence of prior Disciplinary Record. Respondent has no prior disciplinary record.

3.17 Character and Reputation. Evidence presented on the issue of character and reputation was the equivocal testimony of Ms. Stahl, who testified that Respondent had half bad, half good reputation as a lawyer and had performed some good as a politician, testimony from his secretary, and from a personal friend he has known since law school. Mr. Eguster also presented a list of cases he has prosecuted. The association objected on grounds that the synopsis could be self-serving. The list of cases almost all involve "public versus private" issues, such as public disclosure issues, land use actions, financing of sports stadium. Very few of the 54 cases listed involved a private client to whom the duties of confidentiality and loyalty were owed. Many concerned whether or not legislation was appropriate.

The Association entered an evaluation conducted by the Spokane County Bar Association reflecting that Respondent was not qualified to be a judge. A post hearing objection was raised by Mr. Eguster because the document was part of a set of documents that were not admitted into this action. The Association argued that the document was public record and could have been obtained from any source.

3.18 No practicing attorneys testified as to Respondent Eguster's character and reputation in the legal community. The only client who testified for him was Roger, whom he had represented nearly a decade before. His secretary, the woman who characterized Ms. Stead's phone call as a "bitchfest" testified for him, and a personal friend and former practicing attorney, Thomas Tilford, Respondent's partner at Lukins and Ennis, also testified. Mr. Tilford testified "Mr. Eguster is

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widely respected for his intellect, his integrity, his work ethic, his willingness to sacrifice his own financial and sometimes, emotional best for causes that he believes in." He testified Respondent was a talented lawyer who had been a top student when they were in law school at the University of Washington and Mr. Eugster had been a law review editor and top student in many classes. Mr. Tilford has not practiced law since 1982.

3.19 Respondent Eugster took the stand and spent some time detailing his accomplishments, many of them prior to 1970. It is significant that Respondent testified "I became active in the anti-war movement and registered as a lobbyist probably in violation of the Hatch Act to present petitions to the Washington delegations. My friend and I gathered those petitions, ... Unbeknownst to Senator Jackson, we made multiple copies of those petitions at night in his office through the help of one of his employees." TR 691-92. Respondent Eugster, during a hearing about his ethical conduct, testified to his disregard for the law, and misuse of government resources.

3.20 Mr. Eugster did not prove by a clear preponderance that his character and reputation as a lawyer in the legal community or with his clients should be a mitigating factor. He testified about his disregard for the law and rules. He has a loyal secretary and the admiration of a long time friend who hasn't practiced law for over twenty-five years. Ms. Stahl's testimony was equivocal. The bar poll, admitted through Respondent Eugster without objection, mitigated the biased testimony of a loyal friend, a long time employee, and a former client the Association painted as a greedy son.

Character and reputation will not be considered a mitigating factor in this action.

III. CONCLUSIONS OF LAW AND PRESUMPTIVE SANCTIONS

A. Count 1

3.1 **Count 1** - The Association proved beyond a doubt that Respondent Eugster failed to abide by the client's objectives of representation, which were to remove her son Roger from control of her affairs, re-take control of her financial affairs and re-claim property she believed

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Roger had kept in violation of her wishes, Respondent violated RPC 1.2(a).

1. **Duty Violated:** Duties Owed as a professional.

2. **Lawyer's Mental State Respondent:** Mr Eugster knowingly and intentionally engaged in conduct that violated his client's objectives. He sought control over his client's substantial estate and the fees that accompanied that trust. He sought to install Roger as the guardian when the express objective of the representation of Ms. Stead by Mr. Eugster was to remove Roger from any dealing with his mother. Ms. Stead stated in her response to the guardianship petition that she believed Mr. Eugster filed the guardianship petition for his financial gain. Respondent's exhibit 71, beginning at line 25, first page.

3. **Extent of Injury** Ms. Stead and her only son never spoke again after October 2004. Ms. Stead expended \$13,500 from her estate that was to be used for her care in old age to defend against the guardianship action. The injury to Ms. Stead was serious.

4. **Aggravating or Mitigating Factors**

Aggravating ;

1. **Multiple Offenses.** Respondent violated RPC 1.2(a), RPC 1.6(a), RPC 1.9(a), RPC 1.9(b), RPC 3.4©), and RPC 8.4(d). 2)

2. **Refusal to acknowledge wrongful nature of conduct.** Respondent did not acknowledge the wrongful nature of his conduct and he argued his ethical duties were subordinate to the statute regarding power of attorney, and that Ms. Stead should have sued him to remove him as attorney.

3. **Vulnerability of victim.** Ms. Stead was an elderly grieving widow suffering from depression and physical health problems who had lost her husband less than six months prior to her hiring Respondent Eugster. In addition, she had recently left her home of more than twenty years, and was distraught over the state of her relationship with her only child.

4) **Substantial experience of Respondent.** Respondent has been an attorney since 1970 and testified he had extensive experience with elderly clients. Despite his testimony regarding his experience with elderly clients, and his testimony that he was emotionally suffering that summer, he failed to account for Ms. Stead's emotional fragility and failed to notice a hearing loss that

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aggravate their communication difficulties. After receiving a letter discharging him as Ms. Stead's attorney, he listed himself as current attorney in the guardianship action and then attempted to use former RPC 1.6 as a defense, saying he divulged information to protect his client, and former RPC 1.13 for the representation. Respondent's Proposed Findings of Fact 232(f) and 232(g).

Mitigating Factors:

1) **no prior disciplinary history.**

American Bar Association Standards for Imposing Lawyer Sanctions. 7.1 Applies

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious injury to a client, the public or the legal system.

3.2. **Count 2** - The Association proved by a clear preponderance that Respondent Eguster disclosed confidences and/or secrets relating to the representation of Ms. Stead, and by disclosing to Roger and other third parties confidential communications between himself and Ms. Stead, and his impression of her formed during the representation, Respondent violated RPC 1.6(a).

1. **Duty Violated** Duty Failure to preserve client confidences.

2. **Lawyer's Mental State** Respondent Eguster knowingly and intentionally, without his client's permission, disclose client confidences unlawfully. Respondent argued that telling Roger about his conclusions that Ms. Stead was delusional was appropriate because he was a successor trustee and nominated guardian under the documents Mr. Eguster had prepared. This argument is not persuasive, he did not have Ms. Stead's permission, and she wanted Roger's control over her eliminated. Respondent Eguster made his impressions of his client public, and published her financial information when he filed the guardianship petition. It was a knowing revelation that was not lawfully permitted, because the guardianship was not filed to reach the objectives Ms. Stead had requested.

3. **Extent of Injury:** See above.

4. **Aggravating or Mitigating Factors**

Aggravating Factors;

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1. **Multiple Offenses.** Respondent violated RPC 1.2(a), RPC 1.6(a), RPC 1.9(a), RPC 1.9(b), RPC 3.4©, and RPC 8.4(d).

2. **Refusal to acknowledge wrongful nature of conduct.** Respondent contended that his disclosures regarding his client's "incapacity" were authorized. He publicly disclosed his impressions of Ms. Stead's incompetence. There was no effort to have these impressions validated by professionals. When given a chance to share this information with Ms. Stead's new counsel, he refused, taking his suspicions public when contact with his former client's new lawyer could have kept his impressions confidential.

3) **Vulnerability of victim** see above.

4) **Substantial experience of Respondent.**

Mitigating Factors: 1) no prior disciplinary history.

5. **American Bar Association Standards for Imposing Lawyer Sanctions 4.2 Applies**

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed.

3.3 **Count 3 -** The Association proved by a clear preponderance that Respondent Eugster used secrets and confidences to Ms. Stead's disadvantage. He humiliated her in the common room at her home when he had her served by a uniformed officer with the Guardianship papers. He knew about her troubles with Roger and knew or should have known that proposing him as guardian would permanently rupture Ms. Stead's relationship with her only son, less than a year after the loss of her husband. He knew the cost of litigation, Ms. Stead spent \$13,500 defending this action. Respondent violated RPC 1.8(b). used confidences and/or secrets relating to Respondent's representation of former client Ms. Stead to her disadvantage, Respondent violated RPC 1.9(b) see count 2 above.

3.4 **Count 4 -** The Association proved by a clear preponderance that Respondent represented himself in the guardianship action against Ms. Stead, violating RPC 1.9(a).

1. **Duty Violated** Respondent violated the duty to the former client to avoid a conflict with when he used information gained in the estate planning representation to file a guardianship appointing

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Roger as guardian in direct contravention to the client's objective. Respondent argued that his client was competent when she signed the estate planning documents in July, appointing Respondent Eugster trustee with power of attorney. This was in conflict to the estate planning changes the client made after she fired Respondent Eugster because couldn't tell if he was representing her interests or her son Roger's interests.

2. **Lawyer's Mental State** Mr. Eugster knowingly filed an action as the petitioner requesting Ms. Stead's guardian be Roger, and argued that she was competent at the time the client signed Respondent Eugster's estate planning documents in July, which named him trustee with power of attorney had his client been found incompetent.

3. **Extent of Injury** see Count 1

4. **Aggravating or Mitigating Factors** same as counts 1-3

5. **American Bar Association Standards for Imposing Lawyer Sanction 4.32 applies:**

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Mr. Eugster filed an action against his client while saying he was filing on behalf of that client. He had been terminated by Ms. Stead earlier, but has tortured the pleadings and the ethical rules to try to justify his conduct. There was no statement that he had contacted Ms. Stead about this filing. As bar counsel points out in the reply to closing argument "Respondent's argument that Marion was required to use the procedure in RCW 11.94.04.090 to revoke the power of attorney granted to him substantiates that Respondent was knowingly acting as her [his client] adversary and therefore violated RPC 1.9(a):

3.5. **Count 5** - The Association proved by a clear preponderance that Respondent did not to take steps to the extent reasonably practicable to protect Ms. Stead's property after being terminated, including surrendering papers and property to which the client is entitled; and by refusing to turn over Ms. Stead's client file to Mr. Braff until after the guardianship was dismissed, Respondent violated RPC 1.15(d):

1. **Duty Violated** duty to the client to surrender file upon termination of the representation

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2. **Lawyer's Mental State** respondent knowingly kept the file, despite repeated requests from Ms. Stead's subsequent lawyer.
3. **Extent of Injury** extra cost incurred by new attorney recreating file and attendant estate planning documents, inventories, financial records.
4. **Aggravating or Mitigating Factors** see above.
5. **American Bar Association Standards for Imposing Lawyer Sanctions 4.12 applies.**

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

3.6 **Count 6** - The Association agreed to dismiss Count 6 prior to the hearing.

3.7 **Count 7** - The Association agreed to dismiss Count 7 prior to the hearing

3.8 **Count 8** The Association showed by a clear preponderance that filing the petition for guardianship without making a reasonable inquiry about Ms. Stead's mental condition, Respondent violated Civil Rule 11 and/or an obligation under the rules of a tribunal, and therefore, violated RPC 3.4©).

1. **Duty Violated** Abuse of legal process

2. **Lawyer's Mental State** Mr. Eguster knowingly filed a guardianship petition with no independent investigation of Ms. Stead, whom he alleged was his client in the petition and he did so without her knowledge or consent. Mr. Eguster had witnesses who were with Ms. Stead on a daily basis certify to her sanity for testamentary purposes in July, yet they did not offer any statement in support of the guardianship petition. In the guardian ad litem's report, the administrator for Parkview stated that Ms. Stead made and kept her own appointments, administered her own medications and made her own decisions. (Respondent's Ex. 67, page 14.)

3. **Extent of Injury** in addition to the injuries sustained by Ms. Stead, the public and the legal profession are injured. Ms. Stead was an elderly woman whose attorney betrayed her by exploiting the difficult relationship she had with her son, leaving her and her estate isolated from family oversight. Respondent didn't just omit an investigation, he manipulated the judicial system for his own benefit. He prepared the action and then asked Roger to join him in an action that would have

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put Roger in control of Ms. Stead's person, while maintaining financial control himself.

Ms. Stead was living in a communal home with other elderly people when this happened. Respondent Eguster had her served publicly in the common room of the facility. He made public his betrayal of his client's trust. Aged people who may have sought the help and protection of an attorney to deal with difficult family members or financial planning now know that lawyer can go to court to try to betray them. While Ms. Stead prevailed, and the system worked, many don't have the resources, stamina and intestinal fortitude Ms. Stead possessed to contest the guardianship. In Stevens County, the elderly, and all their friends and relations, saw the fox in the hen house and will be loathe to open themselves to such dangers. The public has been damaged because competent, trustworthy legal advice may not be sought when necessary, and the legal profession was damaged because of the diminished trust in the profession engendered by Respondent Eguster's actions, exacerbated by his refusal to acknowledge his own ethical violations, let alone acknowledge the havoc he wreaked in the lives of Ms. Stead and her son.

4. Aggravating or Mitigating Factors see above.

5. American Bar Association Standards for Imposing Lawyer Sanctions 6.21 applies.

Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party. Respondent violated CR 11 when he filed the guardianship action without any independent investigation that would have led to a petition well grounded in fact, and was filed for an improper purpose, the financial gain of Respondent Eguster. The guardianship successfully isolated Ms. Stead from her son, Roger. They didn't speak after October, 2004. Had Respondent Eguster's petition been successful, Roger would have been Ms. Stead's guardian, but Respondent would be the trustee with power of attorney of the trust he had set up in July, in sole control Ms. Stead's substantial estate, when she was 88 years old and estranged from her family. Respondent Eguster drew up his declination to serve after the first guardianship hearing when the court requested briefing on the ethical concerns regarding his service as attorney, trustee and power of attorney for Ms. Stead. He withdrew from the action in November, he no longer had anything to gain.

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Respondent Eguster had the most to gain by filing the guardianship that destroyed the relationship between his client and her son. Had Ms. Stead been found incompetent subsequent to the signing of the estate planning documents Respondent prepared, he would get paid as trustee at \$125 per hour and had power of attorney over an 88 year old woman whose family had been completely estranged. Respondent Eguster had taken some steps to help Ms. Stead get ready for the sale of the house, contrary to Roger's interests. Eguster drafted the will that took the inheritance of the home away from Roger.

Respondent Eguster would have been the trustee over Ms. Stead's estate when she died. Roger would not have inherited the house under the Eguster will. He was only to inherit the house under the Hellenthal wills, and that was all, the remainder of the estate was bequeathed to Emilie. Roger's mother had publicly vilified him as thief, while complaining he wouldn't visit her. Roger would have been in charge of her person if the guardianship was successful, but would gain no monetary advantage or get the house. There was no benefit to Roger if the Eguster estate planning documents were ruled the effective documents had Ms. Stead been found incompetent. Respondent Eguster's conduct would have benefitted him, not Roger. There was only one reason for Mr. Eguster to be so vehement in his refusal to be terminated as Ms. Stead's lawyer. He would lose access to her money. Ms. Stead was in an assisted living facility with people to check on her, regular meals, social contact, friends visited, she was safe, she had a lawyer, and an independent trustee looking after her finances.

Count 9 - Misconduct The Association proved by a clear preponderance of the evidence that Respondent Eguster engaged in Misconduct when he filed a guardianship petition against Ms. Stead. It is professional misconduct for a lawyer to (d) engage in conduct that is prejudicial to the administration of justice.

3.9 Ms. Stead hired respondent Eguster to diminish her son's control over her affairs, help her regain property she believed her son had, investigate the funding of her husband's trust fund subsequent to his death and help her sell her former home. Instead, Respondent Eguster

FINDINGS OF FACT, CONCLUSIONS OF LAW
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substituted his judgement for hers, he took her money, not to achieve her objectives, but to impose his own objectives. Respondent Eugster proposed this finding of fact: page 23 #130:

Stephen Eugster did not believe that Ms. Stead was acting competently or that she was capable of making decisions which were adequate to the fulfillment of her objectives. He concluded that her concerns about Roger Samuels were irrational because they simply were not born out by the facts. He concluded it made no sense for Ms. Stead to have him do the daily work of the management of her assets at her affairs and concluded it made more sense for Roger Samuels to continue to do these things as he had done for many months and indeed many years from [sic] the family. One of her objectives was to clearly preserve her estate and the estate of John Stead so as to ensure that her grandchild Emilie Sammon receive something from the family heritage.

After Ms. Stead questioned Respondent's loyalty to her and terminated the lawyer-client relationship, respondent continued to represent himself as Mrs. Stead's attorney, invoking a statutory power of attorney authority as superior to his ethical duties to a client. He refused to acknowledge that he performed a service for hire, and that when his services were unsatisfactory, he could be terminated. Subsequent to the termination, Respondent Eugster asked Ms. Stead's son to be a joint petitioner in a guardianship action seeking to name the son as his client's guardian, precisely the objective he had been hired to eliminate.

1. **Duty Violated** duty owed as a professional
2. **Lawyer's Mental State** Respondent knowingly and intentionally engaged in conduct of filing the guardianship and knowingly involving Ms. Stead's son as guardian in direct contravention of his client's wishes.
3. **Extent of Injury** Ms. Stead's relationship with her son was permanently disrupted, Ms. Stead incurred \$13,500 in costs, defending against the suit. The public and profession were both injured as set forth above.
4. **Aggravating or Mitigating Factors** see above
5. **American Bar Association Standards for Imposing Lawyer Sanctions 7.1** applies.

FINDINGS OF FACT, CONCLUSIONS OF LAW
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Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. Ms. Stead was an elderly woman whose attorney abandoned her and manipulated the legal system for his own reasons. He knew best, he would also benefit financially if the guardianship petition had been successful in finding the Eugster documents were executed while Ms. Stead was competent. Respondent didn't just engage in a conflict of interest, he prepared the action and then asked Roger to join him in an action that would result in the absolute opposite of the objective his client had hired him to accomplish.

The legal system and the public were both injured by these actions. A lawyer took money to accomplish what he believed to be the best results, not the objective his client requested. The public, especially the elderly population in a small rural area may not seek trustworthy, competent legal advice for estate planning matters or for help with difficult family members about how they conduct their affairs. The legal system was manipulated for Mr. Eugster's selfish ends.

IV. RECOMMENDATION

The Association argues that disbarment is appropriate because Mr. Eugster intentionally violated his ethical duties for the benefit of Ms. Stead's son, Roger. This theory leaves out some important facts. Respondent Eugster drafted the will that disinherited Roger from the house. Mr. Eugster argued to the Superior Court of Stevens county that Ms. Stead was competent when she signed the will making him the trustee and the Power of Attorney. Had he wanted Roger to benefit, Respondent Eugster would have argued Ms. Stead was not competent when she signed his documents, and indeed, it seems that is what Mr. Eugster is saying now. Mr. Eugster was the only one that would have financially benefitted from Ms. Stead being found incompetent after he was named attorney in fact and trustee. The association elicited testimony that Roger is now contesting the will his mother signed two days before her death. Given the size of the estate, Roger's resources, his daughter's interests, and the fact that because of the actions of Respondent Eugster, he had had no contact with his mother for two years prior to her death, this

FINDINGS OF FACT, CONCLUSIONS OF LAW
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seems to be a prudent action to protect his daughter. The association did not elicit testimony about which will, if any, Roger seeks to have ratified.

Ms. Stead wrote in a sworn statement in the guardianship she believe Mr. Eguster was taking the action for his financial gain. Mr. Eguster proffered a finding of fact that he took the actions because he knew best. This lack of understanding of the lawyer client relationship is telling. A lawyer is hired to help people avoid or solve problems, they serve at the pleasure of those who employ them. We are servants, not masters. We can cajole, wheedle, debate, and try to persuade, but we shall not substitute our judgment for the client's.

Mr. Eugster's testimony ranged over the glory days of his youth when he was a well regarded, hard working youth, mowing lawns for a tycoon, (TR 681), Boys State delegate, member of a Governor's Counsel (TR 682). He was elected to the Interfraternity Counsel in college (TR 683) married, went to law school, had success there and then went to Washington, D.C. where he worked on several large cases. (TR 689) Later he was employed by a prestigious firm in Seattle and became a noted public interest attorney. He left a large firm, opened up a small office that disintegrated because he wife and a partner became a couple. (TR 697) During this time he was a guardian ad litem who made a bad call, (TR 700). He married and divorced again, in 1985 close personal family friends were murdered in their beds, the parents died first and the children lingered while Mr. Eugster waited and watched TR 701. At this time he was a partner at the Spokane firm of Lukins and Ennis, which he left because he wanted to now represent the little guy. TR 705 & 706) He became active in politics, was a city councilman, active in changing the city's political structure from city manager to strong mayor, and ran for mayor himself. He married a fine woman, became a father. That marriage ended in 2004. He thought he was "part of the family" in the Ms. Stead matter a son, where he described the relationship between Roger and Ms. Stead as 'love hate". A member of a very dysfunctional family. As noted from his proposed jury instruction, he wasn't trying to carry out the client's stated objectives, he was substituting his judgment for what the objectives should be.

FINDINGS OF FACT, CONCLUSIONS OF LAW
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Respondent offered Character and Reputation as a mitigating factor. Despite his long career as an attorney, and two political campaigns, no practicing attorney testified on his behalf at this hearing, only Roger testified as a client, the Spokane bar association voted him less than competent in a bar poll. His secretary said he is not mean and vindictive!! People just don't know him. Respondent Eugster and Roger did react positively in the courtroom. Mr. Samuels did display hostility to the Association, but he did appear and testify as a hostile witness for the Association. Neither character and reputation or length of practice are considered as mitigating or aggravating factors in this decision.

Respondent Eugster filed a court action in direct opposition to his client's wishes, using the information she gave him in confidence to do so, with no independent investigation whatsoever. Respondent fails to grasp the most fundamental tenant of law practice, serve your client, protect their confidences. The damage to the profession here is bad. Ms. Stead was served in the communal room of a residence full of ageing citizens with dwindling resources, and no doubt, one or two have or know relatives they don't like and/or trust. If your attorney won't help defend you, if your attorney files the action to take away your liberty, and then asks the court to put in place over you the one person you specifically told the attorney you didn't want, there can be no protection and little security. This blow to confidence in the legal system can only be repaired slowly, and must begin with removing Mr. Eugster as a threat to the public. This behavior is so outside of the norm that disbarment is the proper remedy along with \$13,500 in restitution to Ms. Stead's estate. Although most disbarments involve misuse of funds, theft or lying to protect the attorney, in this case a case was filed for the improper purpose of the Respondent retaining his power of attorney and possibly trustee, with sole decision making over the finances of his vulnerable eighty eight year old client.

Ms. Whitt was disbarred for lying during the disciplinary proceedings, in that action, the court said "the misconduct in this case showed serious and grievous disregard of the very heart of a lawyer's duty, fundamental to the privilege to hold a law license, to be honest and

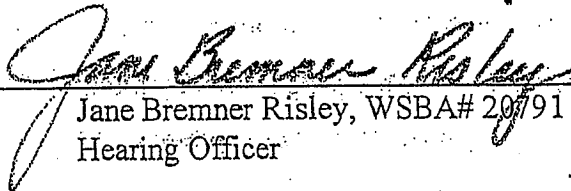
FINDINGS OF FACT, CONCLUSIONS OF LAW
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trustworthy." *In re Discipline of Whitt*, 149 Wn.2d 707 at 715, 72 P 3d 173 (2003). Mr. Eugster has failed to be honest and trustworthy.

V. Post Judgement Motions

Respondent Eugster's fourth motion for dismissal, because the Association used a public document from another grievance is denied, in part because Mr. Eugster made it evidence in this action in his motion to dismiss. A separate order is signed. The fifth motion to dismiss because a friend of his didn't open an unlocked door to a courtroom is not grounds for dismissal. A separate order is entered. Mr. Eugster's "New Case Supplement to Closing Argument, of Respondent, Standard of Proof" is noted and rejected. His argument that the current burden of proof for the Association of "clear preponderance of evidence" is a "mere preponderance" is unpersuasive, and the Association furnished a May 10, 2007 case where the burden is stated in no uncertain terms. "The Association must prove misconduct by a clear preponderance of the evidence." Docket # 200,302-8, *In Re Disciplinary Proceedings of Marshall* _____, P3d. _____, 2007. It is still the rule of law.

Dated May 22, 2007


Jane Bremner Risley, WSBA# 20791
Hearing Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW
HEARING OFFICER'S RECOMMENDATION

APPENDIX 3

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OCT 26 2004

EUGSTER LAW OFFICES, P.S.C.

BY _____

SUPERIOR COURT, STATE OF WASHINGTON, STEVENS COUNTY

In Re the Guardianship of:

) No. 04-4-00074-8

MARION R. STEAD,

) GUARDIAN AD LITEM REPORT

) RCW 11.88.090

An Alleged Incapacitated Person.

)

) (RTGAL)

RECOMMENDATION: It is my recommendation that the guardianship petition be dismissed. In my opinion, Ms. STEAD is legally competent and has the capacity to manage her personal and financial affairs.

1.0 Procedural History.

Date of Appointment: September 27, 2004

Date of Service of Copy of Petition on Guardian Ad Litem: September 30, 2004

Date Guardian Ad Litem's Statement of Qualifications was filed & served: Filed October 14, 2004, Served October 2, 2004

I attest that I am on the Guardian Ad Litem Registry for this County, have conducted approximately 290 Title XI Guardian Ad Litem investigations, and am qualified to serve as Guardian Ad Litem in guardianship matters.

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EXHIBIT

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2.0 Medical/Psychological Report. As required by RCW 11.88.045, I have obtained a written, medical report from Dr. PATRICK J. SHANNON. The report was filed with the Court on October 19, 2004. The examining physician was selected by the Guardian Ad Litem. The reason for selecting this individual to prepare the medical report was that Dr. SHANNON is Ms. STEAD's regular treating physician.

3.0 Meeting(s) with Alleged Incapacitated Person.

Dates of Meetings with Alleged Incapacitated Person	Location of Meeting	Other Persons Present (GAL must meet alone at least once with Alleged Incapacitated Person)
October 7, 2004	Parkview Assisted Living Facility	None

3.1 Personal Information Regarding Alleged Incapacitated Person:

Date of Birth: August 16, 1916

Age: 88 years

Current Residence: Parkview Assisted Living Facility, 240 S. Silke Road, Apt. 112, Colville, WA 99114

Current Phone Number (with area code):

DSHS Client Number: N/A

3.2 Incapacitated Person's Responses Regarding Specific Issues:

Agreement or objection to appointment of a Guardian: Ms. STEAD does not want nor does she believe that she needs a guardian.

Reaction to the proposed Guardian: Ms. STEAD is extremely upset over the manner in

GUARDIAN AD LITEM REPORT - 2
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2 which Mr. SAMUELS, her son, executed his duties as attorney-in-fact for her. She does
3 not wish him to be involved in either her personal or financial affairs at this time.

4 Right to counsel: Ms. STEAD indicated that she wished attorney ANDREW BRAFF to
5 represent her and he has been appointed by the Court in that capacity.
6

7 Preferences regarding choice of counsel: See above

8 Right to a jury trial: This will be determined by Ms. STEAD and her attorney.

9 **3.3 Summary of Interviews with Alleged Incapacitated Person and**
10 **Guardian Ad Litem's Impressions.**

11 I met with Ms. STEAD in her apartment on October 6, 2004. She was
12 appropriately groomed and her apartment was clean although slightly cluttered. She
13 indicated that she had retained attorney ANDREW BRAFF approximately two months
14 ago and that she wished to have him be her attorney in the guardianship.
15

16 She indicated that she and her deceased husband JOHN STEAD had moved to
17 Colville from Philadelphia. Her stated purpose for moving to Colville was to be closer
18 to her granddaughter EMILIE SAMMONS. She indicated that Ms. SAMMONS was
19 currently twenty-one years of age and is attending college at Mount Holyoke. I
20 questioned why her last name was different from her father, ROGER SAMUELS. She
21 indicated that her son had changed his last name after his dissolution of marriage from
22 his ex-wife.
23

24 I asked her if she had had an opportunity to review the guardianship papers and
25 she indicated that she had. She stated that she and her husband had initially gone to Mr.
26 EUGSTER for legal representation at the suggestion of her son. Mr. EUGSTER had
27 apparently made up estate planning documents for she and her husband. Thereafter, she
28 believes that her son took the original Wills made up by Mr. EUGSTER and destroyed.
29
30

1
2 them. He then suggested that they go to see attorney DAVID HELLENTHAL regarding
3 estate planning. At that time, her husband JOHN was terminally ill. She indicated that
4 neither she nor her husband ever wanted to go on Medicaid but that her son insisted. She
5 stated they wanted to "pay their way". She stated that they voiced this feeling to Mr.
6 HELLENTHAL but that he nevertheless prepared Wills which, upon the death of one
7 spouse, placed half of their estate into a supplemental care trust as a Medicaid planning
8 device.
9

10 JOHN STEAD passed away in February, 2004. Ms. STEAD's son was named as
11 Personal Representative in his Will and probated the estate in Spokane County. Ms.
12 STEAD's home was deeded to her personally and one-half of the community assets went
13 into the aforementioned trust. The attorney for the estate was Mr. HELLENTHAL.
14

15 Apparently, the issues which Ms. STEAD had with her son began before the
16 death of her husband. She indicated that Mr. SAMUELS told them he was going to sell
17 the car because neither of them could drive. They objected to his doing so because they
18 wanted to have a car available in the event that others were going to transport them. She
19 also reported that he began taking money out of accounts which the STEADS maintained
20 at Edward Jones in Colville. She reported that Mr. SAMUELS took over payment of her
21 bills after her husband died and took her checkbook. She indicated that it has never been
22 returned to her.
23

24 Feeling that she needed to have independent representation, she stated that she
25 returned to Mr. EUGSTER to represent her. On July 6, 2004, she signed a Durable
26 Power of Attorney naming Mr. EUGSTER as her attorney-in-fact. There had been a
27 previous Power of Attorney executed by Mr. HELLENTHAL in favor of JOHN STEAD
28 and ROGER SAMUELS.
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2 Mr. EUGSTER took over management of her affairs and payment of her bills.
3 However, she became disenchanted with Mr. EUGSTER when, according to her, he
4 would not answer her telephone calls and was not responsive to inquiries by PAUL
5 BUXTON, her investment advisor at Edward Jones. At the recommendation of Mr.
6 BUXTON, she contacted attorney SUMMER STAHL in Colville. Ms. STAHL
7 apparently assisted Ms. STEAD in reversing a change of beneficiary of a life insurance
8 policy which had been made by Mr. SAMUELS.
9

10 In order to revise her estate planning documents, she contacted attorney
11 ANDREW BRAFF in Colville in the late summer of 2004. Mr. BRAFF prepared a
12 Revocation of the Durable Power of Attorney to Mr. EUGSTER and prepared an
13 amendment to her living trust which removed ROGER SAMUELS as Trustee and
14 installed Northwest Trustee & Management Services as Trustee. Ms. STEAD indicated
15 that Northwest Trustee & Management was recommended to her by Mr. BUXTON. It
16 was these latter actions by Ms. STEAD which precipitated this guardianship.
17

18 Ms. STEAD provided me with an extensive history and background. She
19 indicated that she was eighty-eight years old and that her mother had died when she was
20 fourteen months old. Her father passed away when she was four years old and she lost
21 her only brother when she was sixteen. She indicated that her son ROGER had obtained
22 an excellent education at Columbia University and Wharton but that he had worked only
23 about seven years during his lifetime. She stated that he inherited \$1.5 million from his
24 father's relatives. She believes that her son is totally motivated by money and believes
25 that, "as Rockefeller said, you can never have enough money." In addition to her belief
26 that Mr. EUGSTER was non-responsive to her, she indicated that he began defending
27 ROGER to the detriment of her wishes. I asked her if she had spoken with her
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2 granddaughter recently and she said that her granddaughter does not come home for the
3 summer from school and has little involvement with the family. She also stated that her
4 son had not talked with her for two months.

5 I questioned her regarding the personal property which was allegedly taken from
6 her by her son for safekeeping. She mentioned Williamsburg silverware and other
7 personal property which her son has, but denied that she had requested that he take it for
8 safekeeping.
9

10 She stated that her monthly bill at Parkview is paid for automatically by PAUL
11 BUXTON from annuity proceeds. She indicated that her other bills are either paid by
12 her or by Northwest Trustee & Management. She stated that she did not need or want a
13 guardian. She also provided me with a number of persons to contact regarding the issues
14 surrounding this guardianship.
15

16 4.0 Investigation.

17 4.1 Individuals Contacted.

18 STEPHEN EUGSTER (624-5566). I spoke with Mr. EUGSTER, one of the
19 Petitioners on October 7, 2004. He indicated that he had done work for JOHN and
20 MARION STEAD many years ago. He stated that, subsequently, Mr. SAMUELS had
21 taken his mother to see attorney HELLENTHAL. He described that the relationship
22 between Ms. STEAD and ROGER was a "love/hate" relationship and that Ms. STEAD
23 also had delusions regarding Mr. EUGSTER. He stated that he had done a lot of work
24 for her, including a new Durable Power of Attorney, living trust and pourover Will. He
25 stated that she called "almost every day." Mr. EUGSTER indicated that he had gone to
26 Colville in response to her calls and met with her and an individual named LYNN. He
27 stated that Ms. STEAD had asked ROGER to take personal property items and
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1 household goods from her home and place them in safekeeping when she moved out.

2 He stated that Mr. BUXTON had gotten tired of receiving phone calls regarding
3 bills and that Mr. EUGSTER took over paying those bills. He indicated that Ms.
4 STEAD's cost of care at Parkview is coming out of annuity payments and that her son
5 had set up automatic payments for most the bills. He stated that, upon reflection, he does
6 not believe that she was competent to sign the Durable Power of Attorney making him
7 the attorney-in-fact in July, 2004.
8

9 He indicated that he had met with STEPHEN TREFTS after Mr. TREFTS had
10 been appointed as successor trustee. He stated that Mr. TREFTS did not like the
11 testamentary trust and that he was put off by Mr. TREFTS' approach to his duties as
12 trustee. He does not believe that Ms. STEAD is competent. He believes that she cannot
13 direct what is going on but thinks that she could do a Durable Power of Attorney. He
14 stated that he is owed \$4,000.00 by Ms. STEAD and that he believes that the revocation
15 of the Durable Power of Attorney and the change in trustee is invalid. He stated that, at
16 the time of the probate, Mr. SAMUELS had distributed the home in Colville to his
17 mother individually and not into the trust. Finally, he indicated that he is not
18 representing Mr. SAMUELS but is representing himself.
19

20 ROGER SAMUELS (684-1105): I spoke with Mr. SAMUELS on October 7,
21 2004. He indicated that his stepfather, JOHN STEAD, had passed away in February and
22 he attributed Mr. STEAD's passing to malnutrition. He stated that his mother, age
23 eighty-eight, was living in her home at the time and that it ultimately became too much
24 for her to maintain. He stated that a young female friend of hers had persuaded his
25 mother to move to Parkview. She subsequently became surrounded by older ladies who
26 were Christians and, in July, she "excommunicated" Mr. SAMUELS. He believes it is a
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28 GUARDIAN AD LITEM REPORT - 7
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2 psychiatric fallout from the death of her husband.

3 He stated that she contacted Mr. EUGSTER on her own and that he believes he
4 may have been written out of the Will. He also stated that, approximately one month
5 ago, his mother fired Mr. EUGSTER.

6 He stated that Ms. STEAD cannot write a check, cannot pay her own bills and is
7 paranoid.

8
9 Regarding Northwest Trustee, he indicated that a friend of his observed people at
10 his mother's house in Colville. He got a hold of realtor WAYNE BELL, who called Mr.
11 TREFTS. Mr. TREFTS called Mr. EUGSTER. Mr. SAMUELS determined that PAUL
12 BUXTON had referred his mother to Northwest Trustee and that the individuals at the
13 house were representatives of that company.

14
15 He pointed out that his mother had engaged a number of attorneys in the past ten
16 years, starting with Mr. EUGSTER, Mr. HELLENTHAL, then back to Mr. EUGSTER,
17 SUMMER STAHL, ANDREW BRAFF and now Mr. TREFTS, who is an attorney in
18 addition to being the president of Northwest Trustee.

19 He stated that he is the trustee of JOHN STEAD's testamentary trust and that
20 Northwest Trustee had been substituted for him as the trustee of his mother's living trust.
21 He stated that he had been paying his mother's bills and was concerned about the status
22 of payment of those bills since he was removed as trustee. He mentioned ongoing
23 pharmacy bills and utility bills.

24
25 He pointed out that his mother had been orphaned at fourteen months, that she
26 was placed in a home, and that her brother had died a few years later. He described her
27 as being very defensive and indicated that he thought she had been mentally ill since he
28 was fifteen years of age.

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1
2 He recommended that I contact PAUL BUXTON, SUMMER STAHL, LYNN
3 McCain and ORA MAE SACKMAN during the course of my investigation.

4 I asked him whether he felt it would be a problem to be his mother's guardian if
5 she failed to cooperate with him, whether this was based on legitimate concerns or some
6 type of paranoia. He stated that he did not really need her cooperation to be the
7 guardian. He felt that Parkview could manage her medications, which she takes for
8 depression, anxiety and insomnia. He felt he could pay the bills without his mother's
9 cooperation.
10 cooperation.

11 I mentioned to him that I had received a copy of a letter from her treating
12 physician, Dr. SHANNON, indicating that he felt she was competent. He stated that Dr.
13 SHANNON is a general practitioner and not a psychiatrist. He believes that she can
14 present a good front but that she is evasive and deflects questions which she does not
15 understand. He feels that she is delusional regarding her accusations. I questioned
16 which specific accusations and what facts he believed pointed to her need for a guardian.
17 He stated that she had asked him to take items from her house and put them in
18 safekeeping at his house, e.g. silverware, computer, etc., and then denied doing so. He
19 reiterated his assertion that she had had six lawyers in twelve months. He also stated that
20 his mother believed that the State of Washington was going to have to pay for her.
21 his mother believed that the State of Washington was going to have to pay for her.

22 Mr. SAMUELS believes that the Wills prepared by her in 2004 are invalid.
23 However, he stated that the Wills prepared by Mr. EUGSTER and Mr. HELLENTHAL
24 are essentially the same. He stated that his stepfather JOHN had promised the house to
25 ROGER on his death bed and that his mother is now trying to sell it. He indicated that
26 he had seen both the HELLENTHAL and EUGSTER Wills.
27 he had seen both the HELLENTHAL and EUGSTER Wills.

28 He stated that PAUL FITZPATRICK is his attorney. He also stated that, in
29

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31 GUARDIAN AD LITEM REPORT - 9
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1
2 January, 2004, he had taken his mother to see Dr. DUANE GREEN at Sacred Heart
3 Hospital to determine whether she had testamentary capacity. He stated that Dr. GREEN
4 believed, after testing her, that she did have testamentary capacity.

5 I questioned Mr. SAMUELS regarding his background and he indicated that he
6 had worked as a social worker, done juvenile hearings and was a hospital administrator.

7
8 When I indicated that I was going to see his mother, he pointed out to me again
9 that she would seem to me to be very capable. He indicated that just because she had a
10 good vocabulary did not mean that she had functional abilities.

11 PAUL BUXTON (684-8414). I spoke with Mr. BUXTON on October 9, 2004.
12 He works for Edward Jones in Colville. He indicated that he had known JOHN and
13 MARION STEAD for many years and that, during Mr. STEAD's lifetime, MARION had
14 left things pretty much up to JOHN to manage.

15
16 He stated that Ms. STEAD is "far from incompetent". He stated that she is able
17 to understand most things and is able to delegate responsibilities. He believes that the
18 dispute has to do with ROGER SAMUELS wanting his mother to delegate to him. He
19 believes that she has a right to be irritated with her son as "he is pretty pushy."

20
21 Mr. BUXTON indicated that he is still her "investment guy": She had asked him
22 to become her successor attorney-in-fact to take over for her son and he felt that this
23 would be a conflict. He initially recommended Mr. TREFTS but Ms. STEAD went to
24 see Mr. EUGSTER instead because he had done work for her in the past. He stated that
25 Mr. EUGSTER was not "doing the job", in that he was not paying bills or returning
26 calls.
27

28 He stated that in his conversations with JOHN and MARION STEAD, that they
29 felt "arm-twisted" into signing the HELLENTHAL Wills. He believes that Mr.

1
2 SAMUELS wants control of his mother's finances.

3 He stated that he had met Mr. EUGSTER once and that Mr. BUXTON had given
4 him paperwork to change the beneficiary on an annuity. He stated that Mr. EUGSTER
5 never did so. He stated that the accounts at Edward Jones had been changed to joint
6 tenancy with right of survivorship by JOHN and MARION STEAD before JOHN's
7 death. He provided me with the current balances in the Edward Jones account, which
8 includes an IRA and two annuities. He stated that nearly all of the value of the IRA is in
9 a company called Peabody Energy and that this was done at ROGER's insistence in
10 April of 2004. He also stated that he was never informed of the living trust set up by Mr.
11 EUGSTER, so it was never funded.
12

13
14 STEPHEN TREFTS (466-3024). I spoke with Mr. TREFTS on October 11, 2004.
15 I asked him what he thought of Ms. STEAD's mental capabilities. He stated that both he
16 and his associate SANDY CALBREATH believe she is capable of making decisions.
17 He stated that she knows who her heirs are, that she is clear about what she has and what
18 she wants to do with it and that when he met her, she was in the process of hiring estate
19 liquidators and real estate agents to sell her home on her own.
20

21 Ms. STEAD has stated to him that she feels she has been taken advantage of by
22 her son and legal agents. She described to him a meeting with Mr. HELLENTHAL and
23 stating "it was like we weren't even in the room." She stated that Mr. HELLENTHAL
24 was talking directly to her son ROGER and that "JOHN would never want me to be on
25 welfare."
26

27 Mr. TREFTS indicated that he had spent approximately five hours with Ms.
28 STEAD and that she is "really sad" and in the grieving process. He stated that he had
29 met with Mr. EUGSTER and that Mr. EUGSTER had indicated that he trusted Mr.
30

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1
2 TREFTS. He indicated that he told Mr. EUGSTER "if you trust me, believe me when I
3 tell you she is competent."

4 Ms. STEAD has indicated that she felt that Mr. EUGSTER was not representing
5 her and that he was representing ROGER SAMUELS. She believes that this is a conflict
6 of interest.
7

8 SANDY CALBREATH (466-3024). I spoke with Ms. CALBREATH, a trust
9 officer for Northwest Trustee & Management, on October 10, 2004. She advised me that
10 Ms. STEAD had seen a counselor in Spokane on January 30, 2004. This was
11 approximately two weeks before her husband died. She stated that, according to Ms.
12 STEAD, ROGER was being cruel to them. Apparently, Dr. GREEN indicated that Ms.
13 STEAD was competent.
14

15 Ms. CALBREATH indicated that she had spent the day with Ms. STEAD on
16 September 28, 2004. She described her as "very sharp". She was concerned about bills
17 being paid and homeowners insurance. They went to see Mr. BUXTON, went to the
18 bank and saw Ms. STEAD's accountant. According to Ms. CALBREATH, she was
19 appropriate and informed throughout the day.
20

21 SUMMER STAHL (680-0205). I spoke with Ms. STAHL on October 12, 2004.
22 She had been involved with Ms. STEAD both before and after her husband died. She
23 said the conversations centered around what a "mess" their estate planning was in. I
24 asked her when she had last seen Ms. STEAD and she indicated that she had seen her the
25 afternoon of my call. She stated "there is no incapacity at all."
26

27 She stated that Mr. and Mrs. STEAD were concerned that ROGER was taking
28 their money and said that he was going to sell their furniture and their car. She stated
29 "they just wanted somebody on their side."
30

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2 Ms. STEAD became concerned because ROGER did not work and had inherited
3 money. She also observed that JOHN STEAD could be very demanding and observed
4 that he was extremely irritated with Mr. SAMUELS just prior to his death.

5 She does not believe that Ms. STEAD needs a guardian. She indicated that Mr.
6 EUGSTER had come up to see Ms. STEAD after JOHN STEAD had died. She had
7 expressed concerns regarding what her son was doing. She had indicated that ROGER
8 took funds and put them in the "ROGER/EMILIE" trust. Ms. STEAD stated that she
9 had tried to get a hold of Mr. EUGSTER and could not connect with him.

10
11 Ms. STAHL indicated that Mr. SAMUELS was doing a lot for the STEADS
12 before JOHN died but that he was not doing what they wanted. She stated that JOHN
13 was "very unhappy" that he signed the HELLENTHAL Will. Both Mr. and Mrs.
14 STEAD wanted everything to go to MARION upon JOHN's death but Ms. STAHL
15 described him as being "too tired" to change his Will before he died.

16
17 She believes that Mr. SAMUELS was trying to do what was in the best interests
18 of his mother and stepfather and that she could see where he was coming from.
19 However, she feels that he did not have the right to do things against their wishes, such
20 as sell the vehicle, have them sign Medicaid Wills and change the beneficiary on their
21 insurance.

22
23 DENNIS SWEENEY (738-6834). Mr. SWEENEY has known the STEADS
24 since 1986. He was the builder and designer of their home in Colville.

25
26 He was recently contacted by Ms. STEAD and wanted help in explaining the
27 energy features of the home to a realtor preparatory to marketing the home. He indicated
28 that he knows ROGER SAMUELS as well, and has worked for him in the past. He last
29 saw Ms. STEAD approximately ten days ago and he said, without question, that she is

1
2 able to handle her own affairs.

3 It is his understanding that Ms. STEAD contacted realtor MIKE LYMAN of
4 United Country Realty with respect to selling her home. Mr. TREFTS selected another
5 realtor from another firm to obtain a second opinion on the value of the home. Mr.
6 SWEENEY had discussed with Ms. STEAD some cosmetic work which needed to be
7 done in order to sell the house, such as paint, popped sheet rock nails and yard work.
8

9 He stated "it is a good idea to do whatever Marion wants." However, he told me
10 that approximately six months ago, she had contacted him to discuss closing in the front
11 porch. When he arrived at the home, Mr. SAMUELS was there and immediately began
12 lobbying against it. Mr. SWEENEY, independently of Mr. SAMUELS'
13 recommendation, also indicated to Ms. STEAD that it would not be a good idea to close
14 in the front porch and she agreed.
15

16 He stated that in his dealings with Mr. SAMUELS, it is his observation that Mr.
17 SAMUELS can easily offend people. It is also his belief that Ms. STEAD's concerns
18 regarding her son are justified.
19

20 MARY WEAR (684-5677). Ms. WEAR is an administrator at Parkview Assisted
21 Living Facility. She reported to me that Ms. STEAD has a very good memory. She
22 makes and keeps her own appointments, does all of her own personal grooming, reorders
23 her own medications, monitors her own medications and takes them at the time
24 indicated. She stated that she had observed no deficits at all in Ms. STEAD. She stated
25 that Ms. STEAD had been worried a lot because of the breakup with her son, but had
26 been more relaxed recently. She believes that Ms. STEAD was justifiably worried. She
27 indicated that she had met Mr. SAMUELS only a couple of times early on. She does not
28 believe that Ms. STEAD needs a guardian for personal decisions and has not observed
29
30

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1
2 any problems with her finances. She reports that Ms. STEAD always delivers the check
3 for her rent on time.

4 MARILYN HANEY (684-2150). I spoke with MARILYN HANEY on October
5 13, 2004. She stated that the STEADS had lived one-half block from her and she had
6 known them since they moved into their home. She also delivered meals on wheels to
7 them for the last few years. When JOHN STEAD became ill, Ms. HANEY became
8 more involved and saw Ms. STEAD every other day.
9

10 She stated that she had last seen Ms. STEAD in September and described her as
11 "sharp as a tack." She stated that Ms. STEAD is probably the most "together" elderly
12 person she has ever seen. She acknowledged that Ms. STEAD sometimes had memory
13 lapses but described them as being no worse than those experienced by much younger
14 people.
15

16 She stated that she had known Mr. SAMUELS since before his daughter was
17 born. She stated that he "doesn't treat MARION very nice." According to her, he
18 apparently believes that Ms. STEAD shouldn't control finances or decisions regarding
19 her property. She does not know the details of how Mr. SAMUELS allegedly abused the
20 Durable Power of Attorney, but has just heard stories from Ms. STEAD or others.
21

22 She believes that Ms. STEAD does not need a guardian. She is happy that Ms.
23 STEAD is currently at Parkview, as she believes that maintenance of the house was too
24 much for her. She describes Ms. STEAD as having a lot of visitors and has been present
25 on occasion when Ms. STEAD remembers details of what has gone on with the families
26 of the visitors. She described Ms. STEAD as being "in the here and now" rather than
27 living in the past or living in "another world".
28

29 LYNN McCAIN (680-2420). I spoke with LYNN McCAIN on October 13, 2004.
30

1
2 Ms. McCAIN is a friend of Ms. STEAD. She indicated that she was aware that Mr.
3 SAMUELS believes that his mother needs a guardian. She stated that, once in a great
4 while, she sees confusion in Ms. STEAD. However, she also stated that Ms. STEAD
5 was "witty, strong and intelligent" and that she had never seen her other than capable.
6 She went on to say that she thinks that Ms. STEAD should retain her rights and
7 independence and that she is "the most capable eighty-eight year old I have ever met."
8 On the other hand, she stated that she is not a good judge as to whether Ms. STEAD
9 needs help with her financial affairs and stated that she had no opinion in that regard.
10 However, she further stated that she did not want to reinforce ROGER's belief that his
11 mother needed a guardian.
12

13
14 JOYCE LINGERFELT (684-2072). I spoke with Ms. LINGERFELT on October
15 14, 2004. She is a family nurse practitioner and a licensed private social worker. She
16 has been counseling with Ms. STEAD since before her husband passed away. Ms.
17 LINGERFELT had seen Ms. STEAD earlier in the day. She stated that "I never thought
18 she needed a guardian." After Mr. STEAD's death, she stated that there may have been
19 some confusion as a result of stress. However, she indicated that Ms. STEAD was
20 always oriented. She is taking what Ms. LINGERFELT describes as a "pediatric dose"
21 of Zolofit (25 mg) and indicated that for a time, Ms. STEAD was taking Lorazipam to
22 assist her in sleeping.
23

24 She stated that she knows Mr. SAMUELS "a little bit". She feels that he does
25 not understand the concept of empathy and that he is greedy. She stated that Mr.
26 SAMUELS came in with his mother for the first couple of appointments and that he kept
27 saying "we need to focus on putting the house into trust or the state will take it." She
28 also stated that she had heard from Mr. BUXTON that ROGER had been bullying the
29
30

1
2 STEADS when JOHN STEAD was alive. She stated "I really didn't think he would go
3 to the lengths that he has to declare her incompetent."

4 Ms. LINGERFELT believes that Ms. STEAD "absolutely" does not need a
5 guardian. She is able to seek assistance on her own, exhibits no tangentiality, stays on
6 point and finishes her thoughts. She feels that Ms. STEAD does better than many
7 younger people with problem solving and judgment.
8

9 DR. DUANE GREEN, PhD (455-8660). I spoke with Dr. GREEN on October
10 18, 2004. He stated that Mr. SAMUELS had brought his mother to see him on January
11 4, 2004. The purpose of the visit was to determine if Ms. STEAD had testamentary
12 capacity. Dr. GREEN stated that he met with her for 1 ½ hours and, while he did no
13 formal testing, he determined that she did have testamentary capacity.
14

15 He stated that there was clearly an interpersonal issue between Ms. STEAD and
16 her son. Mr. SAMUELS stated that "she accused me of malfeasance and hired an
17 attorney. I won't do anything without having her evaluated." Mr. SAMUELS had
18 apparently quit paying her bills, she wanted a few "treasured things" out of the trust and
19 wanted an insurance policy beneficiary changed. Dr. GREEN described her as
20 "desperate", as she had no access to funds.
21

22 He opined that "the poor woman had her husband dying and was very upset."
23 When I suggested that Mr. SAMUELS might not have been sensitive to that, Dr.
24 GREEN said "that is an understatement."
25

26 DAVID HELLENTHAL (325-8494). I spoke with Mr. HELLENTHAL on
27 October 21, 2004. He was aware of the dispute between Ms. STEAD and her son and
28 called it "surprising". He indicated that when he had met with them, along with
29 MARION's husband JOHN, that the three of them seemed to get along. He also
30

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1
2 indicated to me that Mr. SAMUELS was coming in to see him at 10:00.

3 He stated that he did not get the impression when meeting with the three of them
4 that Mr. SAMUELS was trying to control the STEADS. He stated that he had never
5 heard there was any dissatisfaction expressed over their estate planning documents.
6 They had apparently discussed with Mr. HELLENTHAL going to live at Parkview, but
7 were not ready at that time to make the move.
8

9 Mr. HELLENTHAL stated that he had received a letter from STEVE TREFTS
10 requesting \$2,000.00 per month for living expenses and he wrote a letter to Mr. TREFTS
11 indicating that Ms. STEAD's assets should be used first. Mr. HELLENTHAL indicated
12 that he believed he may be a witness in this matter and that he will not be representing
13 Mr. SAMUELS because of that potential conflict of interest.
14

15 ORA MAE SACKMAN. I spoke with Ms. SACKMAN on October 22, 2004.
16 She stated that she had known Ms. STEAD since she and her husband had moved to
17 Colville. They attended the same church for many years. She indicated that she had
18 seen Ms. STEAD very frequently since Mr. STEAD passed away, at least two times per
19 week. Ms. STEAD has admitted to her that she needs help with her finances, as her
20 husband JOHN had handled the finances prior to his death. She does not understand the
21 nature of investing but Ms. SACKMAN believes that she could pay her own bills, but
22 does not want to. She believes that Ms. STEAD makes good decisions and that she does
23 not need a guardian.
24

25 She is aware that Ms. STEAD is upset with Mr. SAMUELS and Mr. EUGSTER.
26 She knows Mr. SAMUELS, as Mr. SAMUELS also went to the same church. She
27 stated "He is a brilliant person but he doesn't have a heart where his mother is
28 concerned.". She stated that Ms. STEAD has been extremely upset since this
29
30

1 guardianship started and has been calling her at least one time per day. She did not call
2 that frequently prior to the institution of the guardianship.
3

4 4.2 Written Materials Reviewed.

5 All pleadings and Declarations, multiple Durable Powers of Attorney,
6 Revocation of Durable Power of Attorney, real estate evaluation letter of 9/24/04
7 (WAYNE BELL).
8

9 5.0 Nature, Cause and Degree of Incapacity - Functional Limitations.

10 5.1 Medical Diagnosis and Cause.

11 Ms. STEAD suffers from chronic hypertension, mild lower leg edema, history of
12 degenerative osteoarthritis and occasional gout, some cardiomyopathy with congestive
13 heart failure, mild renal insufficiency and mild adult-onset diabetes mellitus. She is also
14 suffering some depression.
15

16 5.2 Degree of Incapacity.

17 According to her treating physician and counselor, she is not suffering from any
18 incapacity.
19

20 6.0 Alternatives to Guardianship.

21 Ms. STEAD has placed her personal assets into a living trust with Northwest
22 Trustee & Management Services as Trustee. In my opinion, she was competent to do so
23 and is competent to execute a Durable Power of Attorney.
24

25 7.0 Abilities of Alleged Incapacitated Person and Degree of Assistance Required.

26 In my opinion, Ms. STEAD is capable of managing her personal and financial
27 affairs. She is capable of, and has, made arrangements for the handling of her financial
28 affairs by a qualified trustee.
29
30

1
2 **8.0 Recommendation as to Appointment of Guardian.**

3 It is my opinion that Ms. STEAD does not need a guardian of either her person or
4 estate.

5 **9.0 Recommendation Regarding Alleged Incapacitated Person's Right to Vote:**

6 Ms. STEAD should retain the right to vote.

7
8 **10.0 Evaluation of Proposed Guardian:**

9 In the event that the Court were to appoint a guardian, it would be my
10 recommendation that it not be Mr. SAMUELS.

11 **10.1 Dates of Contact Between Guardian Ad Litem and Proposed**
12 **Guardian and Written Materials Reviewed:**

13 October 7, 2004, see 4.2 above

14
15 **10.2 Identity and Contact Information Regarding Proposed Guardian:**

16 Name: ROGER SAMUELS

17 Mailing Address: P.O. Box 813, Kettle Falls, WA 99141

18 Street Address (if different from above):

19 Telephone Number: 684-1105

20 Fax Number:

21 E-mail Address:

22 If Guardian is Certified,
23 Provide Certification No.:

24 Relationship, if any, between Proposed Guardian and Alleged Incapacitated Person: Mr.
25 SAMUELS is the son of MARION STEAD.
26
27
28
29
30

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10.3 Description of Steps Proposed Guardian Has or Intends to Take to Meet the Alleged Incapacitated Person's Needs.

Mr. SAMUELS has been removed by Ms. STEAD as her attorney-in-fact for taking actions on her behalf which she opposed. He proposes to reassume the duties of paying her bills, managing her income and assisting in managing her personal affairs.

11.0 Recommendation Regarding Advice of Right to Jury Trial.

This will be determined by Ms. STEAD and her attorney.

12.0 Recommendation Regarding Appointment of Independent Counsel.

Mr. BRAFF has been appointed.

13.0 Estimate of Estate (Based on Available Information):

Real Property - Colville home	\$ 141,900.00 MOL
Cash on Hand - personal account	\$ 500.00
Business	\$
Securities - Edward Jones	\$ 125,942.00
Mortgages and Notes	\$
Bank/Trust Account - N.W. Trustee	\$ 5,000.00
Cash Surrender Value Insurance	\$
Personal Property	\$
Sources of Income: Social Security	\$ 1,022.00/mo.
Other: Beneficiary of testamentary trust	\$
	\$
ESTIMATED TOTAL	\$ 273,342.00

1
2
3 14.0 Recommendation Regarding Bond/Annual Reports. I recommend that:

4 In the event that the Court holds that a guardianship is necessary, I recommend
5 that a bond be set in the amount of the unrestricted assets and that the guardian be
6 required to file reports every year.

7 15.0 Recommendation Regarding Presence of Alleged Incapacitated Person at
8 Hearing
9

10 The presence of the Alleged Incapacitated Person should not be waived, as she is
11 able to attend the hearing.

12 16.0 Other Recommendations.

13 None

14 17.0 Recommendation as to Guardian Ad Litem's Continuing Involvement in
15 Future Proceedings.

16 I recommend that the Guardian Ad Litem

17 [] be

18 [X] not be

19 involved in future proceedings in this matter.

20 21 22 18.0 Individuals Who Should be Advised of Their Right to Request Special Notice
23 of Proceedings Pursuant to RCW 11.92.150.

24

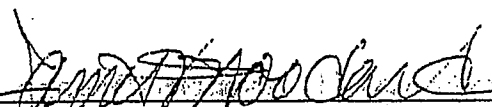
Name, Title and Address	Relationship to Alleged Incapacitated Person
ROGER SAMUELS P.O. Box 813, Kettle Falls, WA 99141	Son

25
26
27
28
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2
3 I certify (or declare) under penalty of perjury under the laws of the State of
4 Washington that to the best of my knowledge the statements above are true and correct.
5

6
7
8 
9 Signature of Attorney

JAMES V. WOODARD, WSBA #11274
Printed Name of Attorney WSBA/CPG#

10 N. 900 Maple, Suite 300
11 Address

509-328-3777 / 509-326-6473
Telephone/Fax Number

12 Spokane, WA 99201
13 City, State, Zip Code

woodardhughes@qwest.net
E-Mail Address

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APPENDIX 4

WASHINGTON'S FORMER RULES OF PROFESSIONAL CONDUCT

(As of September 1, 2003)

RPC 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to sections (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RPC 1.6 CONFIDENTIALITY

(a) A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in sections (b) and (c).

RPC 1.8 CONFLICT OF INTEREST; PROHIBITED TRANSACTIONS; CURRENT CLIENT

A lawyer who is representing a client in a matter:

(b) Shall not use information relating to representation of a client to the disadvantage of the client unless the client consents in writing after consultation.

RPC 1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts; or

(b) Use confidences or secrets relating to the representation to the disadvantage of the former client, except as rule 1.6 would permit.

RPC 1.15 DECLINING OR TERMINATING REPRESENTATION

(d) A lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

RPC 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;